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S. C.

(19,084.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 433.

STATE OF MINNESOTA, APPELLANT,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, ET ALS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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STATE OF MINNESOTA, County of Ramsey. DISTRICT COURT, Second Judicial District.

THE STATE OF MINNESOTA,

Plaintiff,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually,

Defendants.

SUMMONS AND COMPLAINT.

THE STATE OF MINNESOTA TO THE ABOVE NAMED DEFENDANTS:

You, and each of you, are hereby summoned and required to answer the complaint of the plaintiff in the above entitled action, a copy of which is hereto annexed and herewith served upon you, and to serve a copy of your answer to said complaint on the subscriber, W. B. Douglas, at his office in the Capitol in the city of St. Paul, in said county, within twenty (20) days after the service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, plaintiff in this action will apply to the Court for the relief in the complaint prayed.

W. B. DOUGLAS,
Attorney General,
St. Paul, Minn.

M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

Filed April 15, 1902.

EDWARD G. ROGERS, Clerk.
By G. A. LIMBERG, Deputy.

5 STATE OF MINNESOTA, DISTRICT COURT,

County of Ramsey. Second Judicial District.

THE STATE OF MINNESOTA,

Plaintiff,

vs.

6 NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually,

Defendants.

The State of Minnesota, by Wallace B. Douglas, its Attorney General, for its cause of action against the defendants,
7 and each of them, alleges and shows to the Court:

I.

That the defendant the Northern Securities Company is a corporation organized, existing in and doing business under and by virtue of the laws of the State of New Jersey. That said corporation was organized on the 13th day of November, A. D. 1901, with its principal office for the transaction of its business located at the City of Hoboken, County of Hudson and State of New Jersey (and is a citizen of the State of New
8 Jersey), and, pursuant to its articles, is conducting business in the State of Minnesota, with its principal place of business in St. Paul in said state, wherein resides the defendant, James J. Hill, its president and principal executive officer, and owns, within said state, a vast amount of personal property.

That the Articles of Incorporation of said Northern Securities Company are as follows:

CERTIFICATE OF INCORPORATION OF NORTHERN SECURITIES COMPANY.

STATE OF NEW JERSEY, ss.:

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under and pursuant to the provisions of the Act of the Legislature of the State of New Jersey, entitled An Act Concerning Corporations (Revision of 1896), and the Acts amendatory thereof and supplemental thereto, do hereby certify as follows:

First: The name of the corporation is NORTHERN SECURITIES COMPANY.

Second: The location of its principal office in the State of New Jersey is at No. 51 Newark street, in the City of Hoboken, County of Hudson. The name of the agent therein, and in charge thereof, upon whom process against the corporation may be served, is Hudson Trust Company. Such office is to be the registered office of the corporation.

Third: The objects for which the corporation is formed are:

(1) To acquire by purchase, subscription or otherwise, and to hold as investment, any bonds or other securities or evidences of indebtedness, or any shares of capital stock created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country.

(2) To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds or other securities or evidences of indebtedness created or issued by any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country, and, while owner thereof, to exercise all the rights, powers and privileges of ownership.

(3) To purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of any other corporation or corporations, association or associations, of the State of New Jersey, or of any other State, Territory or country; and, while owner of such stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(4) To aid in any manner any corporation or association of which any bonds, or other securities or evidences of indebtedness or stock are held by the corporation; and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or other securities or evidences of indebtedness or stock.

(5) To acquire, own and hold such real and personal property as may be necessary or convenient for the transaction of its business.

The business or purpose of the corporation is from time to time to do any one or more of the acts and things herein set forth.

The corporation shall have power to conduct its business in other States and in foreign countries, and to have one or more offices out of this State, and to hold, purchase, mortgage and convey real and personal property out of this State.

Fourth: The total authorized capital stock of the corporation is Four Hundred Million Dollars ($400,000,000), divided into four million (4,000,000) shares of the par value of one hundred dollars ($100) each. The amount of the capital stock with which the corporation will commence business is thirty thousand dollars.

Fifth: The names and postoffice addresses of the incorporators, and the number of shares of stock subscribed for by each (the aggregate of such subscriptions being the amount of capital stock with which this company will commence business) are as follows:

Name and Postoffice Address.	Number of Shares.
George F. Baker, Jr., 258 Madison Avenue, New York, New York.	100
Abram M. Hyatt, 214 Allen Avenue, Allenhurst, New Jersey.	100
Richard Trimble, 53 East Twenty-fifth Street, New York, New York.	100

Sixth: The duration of the corporation shall be perpetual.

Seventh: The number of directors of the corporation shall be fixed from time to time by the by-laws; but the number, if fixed at more than three, shall be some multiple of three. The directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year; the directors of the second class for a term of two years; and the directors of the third class for a term of three years; and at each annual election the successors to the class of directors whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one class of directors shall expire in each year.

In case of any increase of the number of the directors the additional directors shall be elected as may be provided in the by-laws, by the directors or by the stockholders at an annual or special meeting, and one-third of their number shall be elected for the then unexpired portion of the term of the directors of the first class, one-third of their number for the unexpired portion of the term of the directors of the second class, and one-third of their number for the unexpired portion of the term of the directors of the third class, so that each class of directors shall be increased equally.

In case of any vacancy in any class of directors through death, resignation, disqualification or other cause, the remaining directors, by affirmative vote of a majority of the Board of Directors, may elect a successor to hold office for the un-

21 expired portion of the term of the director whose place shall be vacant, and until the election of a successor.

The Board of Directors shall have power to hold their meetings outside the State of New Jersey at such places as from time to time may be designated by the by-laws, or by resolution of the Board. The by-laws may prescribe the number of directors necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number of the directors.

As authorized by the Act of the Legislature of the State of
22 New Jersey passed March 22, 1901, amending the 17th section of the Act Concerning Corporations (Revision of 1896), any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the whole Board of Directors. Any other officer or
23 employe of the corporation may be removed at any time by vote of the Board of Directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws, or by vote of the Board of Directors.

The Board of Directors, by the affirmative vote of a majority of the whole Board, may appoint from the Directors an executive committee, of which a majority shall constitute a quorum; and to such extent as shall be provided in the by-laws, such committee shall have and may exercise all or any of the powers of Board of Directors, including power to cause the seal of the corporation to be affixed to all papers that may
24 require it.

The Board of Directors may appoint one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, the persons so appointed respectively shall have and may exercise all the powers of the president, of the treasurer, and of the secretary, respectively.

The Board of Directors shall have power from time to time 25
to fix and to determine and to vary the amount of the working capital of the corporation; to determine whether any, and, if any, what part of any accumulated profits shall be declared in dividends and paid to the stockholders; to determine the time or times for the declaration and the payment of dividends, and to direct and to determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion the Board of Directors may use and apply any such surplus or accumulated profits in purchasing or acquiring its bonds or other obligations, or shares 26
of the capital stock of the corporation, to such extent and in such manner and upon such terms as the Board of Directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold, unless such shares shall have been retired for the purpose of decreasing the capital stock of the corporation to the extent authorized by law.

The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have 27
any right to inspect any account or book or document of the corporation, except as conferred by statute of the State of New Jersey, or authorized by the Board of Directors or by a resolution of the stockholders.

The Board of Directors may make by-laws, and, from time to time, may alter, amend or repeal any by-laws; but any by-laws made by the Board of Directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

IN WITNESS WHEREOF, We have hereunto set our hands 28
and seals, the twelfth day of November, 1901.

GEO. F. BAKER, JR. (L. S.)
ABRAM M. HYATT, (L. S.)
RICHARD TRIMBLE, (L. S.)

Signed, sealed and delivered
in presence of
GEO. HOLMES.

STATE OF NEW YORK,

County of New York, ss.

MANHATTAN.

BE IT REMEMBERED, That on this twelfth day of November, 1901, and recorded in Clerk's Record No....., on Page ..... junior, Abram M. Hyatt, Richard Trimble, who, I am satisfied, are the persons named in and who executed the foregoing certificate; and I, having first made known to them, and to each of them, the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

GEO. HOLMES,
Master in Chancery of New Jersey.

Endorsed:

"Received in the Hudson Co., N. J., Clerk's Office, Nov. 13, A. D. 1901, and recorded in Clerk's Record No....., on Page.....

"MAURICE J. STACK, Clerk."

"Filed Nov. 13, 1901, George Wurts, Secretary of State."

II.

That the defendant, the Great Northern Railway Company, is a corporation organized and existing under and by virtue of the laws of the State of Minnesota, to-wit: under an act duly passed by the Territory of Minnesota, entitled, "An Act to incorporate the Minneapolis and St. Cloud Railroad Company," approved March first, A. D. 1856, and various subsequent acts of the State of Minnesota amendatory thereof and supplemental thereto, respectively entitled as follows:

"An Act to amend an Act entitled, 'An Act to incorporate the Minneapolis & St. Cloud Railroad Company,' passed March 1st, 1856." Approved February 23rd, 1864.

"An Act of the Legislature of the State of Minnesota, entitled 'An Act granting swamp lands to aid the Minneapolis & St. Cloud Railroad Company in building branches to con-

nect with the Lake Superior & Mississippi Railroad and the Winona & St. Peter, or any other railroad in Southern Minnesota'." Approved February 11, 1865. 33

"An Act to amend an Act entitled 'An Act to incorporate the Minneapolis & St. Cloud Railroad Company,' approved March 1st, 1856, and to repeal certain portions of an Act amending the Charter of said Company, passed February 23rd, 1864." Approved February 28th, 1865.

"An Act to amend an Act entitled 'An Act granting swamp lands to aid the Minneapolis & St. Cloud Railroad Company in building branches to connect with the Lake Superior & Mississippi Railroad and Winona & St. Peter Railroad, or any other railroad in Southern Minnesota'." Approved March 5th, 1869. 34

"An Act to amend the Charter of the Minneapolis & St. Cloud Railroad Company." Approved March 6th, 1869.

"An Act to amend the Charter of the Minneapolis & St. Cloud Railroad Company." Approved March 2nd, 1870.

"An Act to extend the time for the construction and completion of the branch of the Minneapolis & St. Cloud Railroad Company." Approved March 11th, 1879.

"An Act to amend an Act entitled 'An Act granting swamp lands to aid the Minneapolis & St. Cloud Railroad Company in building branches to connect with the Lake Superior & Mississippi Railroad and the Winona & St. Peter Railroad, or any other railroad in Southern Minnesota', approved February 11th, in the Year of Our Lord One Thousand Eight Hundred and Sixty-five as amended." Approved March 1st, 1885. 35

That on the 16th day of September, 1889, the corporate name of said company was duly changed to the Great Northern Railway Company. That during the year 1889, said railway company caused to be constructed a line of railway extending from St. Cloud, Minnesota, to Hinckley, Minnesota, 36 which line was immediately conveyed to the St. Paul, Minneapolis & Manitoba Railway Company, a corporation duly organized and existing under and by virtue of the Laws of the State of Minnesota, hereinbefore referred to as the Manitoba Company. That said Manitoba Company, prior to the first day of February, 1890,, had built, purchased and put in operation various lines of railway within the State of Minnesota,

as well as in the States of North Dakota, Montana, Idaho and Washington, connecting by rail the cities of St. Paul and Minneapolis, within the State of Minnesota, and various other cities and villages within said state, with each other, and with Puget Sound, on the Pacific ocean; which said railways are hereinafter more particularly described.

That on the first day of February, 1890, said Manitoba Railway Company leased to the said Great Northern Railway Company, for a period of nine hundred and ninety-nine years, all of the lines of railway, including the rolling stock then owned and controlled by said Manitoba Company; that ever since said last named date said Great Northern Railway Company has continued to and now does control, operate and maintain each and all of said lines as one complete railway system. That said lines of railway so constructed by said Manitoba Company and now so controlled, operated and maintained by said Great Northern Railway Company under said lease, are described as follows:

A line of railway extending from St. Paul, Minnesota, via Minneapolis, Elk River, St. Cloud, Sauk Centre, Fergus Falls, Glyndon, Crookston to the northern boundary line of the State of Minnesota at St. Vincent.

Another line of railway extending from Minneapolis, Minnesota, along the western bank of the Mississippi river to St. Cloud, Minnesota.

Another line of railway extending from St. Cloud easterly to Hinckley, Minnesota.

Another line of railway extending from Elk River, Minnesota, northward to Malaco, Minnesota, on the line of the St. Cloud & Hinckley Branch, last above referred to.

Another line of railway extending from Minneapolis, Minnesota, to Breckenridge, Minnesota.

Another line extending from Sauk Centre, Minnesota, to Park Rapids, Minnesota.

Another line of Railway extending from Hutchinson Junction to Hutchinson, Minnesota.

Another line of railway extending from Benson, Minnesota, thence in a westerly direction to the western boundary line of the state; thence to Watertown, South Dakota.

Another line of railway extending from Evansville, Minnesota, westerly to the state boundary line, thence to Ellendale, North Dakota. 41

Another line of railway extending from Moorhead, Minnesota, westerly to the state boundary line; thence to Wahpeton, North Dakota.

Another line of railway extending from Moorhead, Minnesota, to Crookston, Minnesota.

Another line of railway extending from Barnesville, Minnesota, to Moorhead, Minnesota.

Another line of railway extending from Carman, Minnesota, to Foster, Minnesota. 42

Another line of railway extending from Crookston, Minnesota, to Red Lake Falls and Thief River Falls, Minnesota.

All of the foregoing lines being situated in the State of Minnesota, except as hereinafter otherwise expressly stated.

That said Great Northern Railway Company now either owns or controls, and operates and maintains, by virtue of said lease, a line or system of railways connecting with said lines above referred to, and extending from the western boundary line of the State of Minnesota through the states of North Dakota, Montana, Idaho and Washington, to Puget 43 Sound on the Pacific coast. The said railway lines covered by said lease, or owned by said Great Northern Railway Company aggregate a total of about five thousand miles.

That many of said railroads above described, located within the State of Minnesota, were built by subsidiary companies or corporations, and said Great Northern Railway Company now owns all of the capital stock of such corporations in addition, and as supplemental to, its said lease; and in addition thereto said Great Northern Railway Company owns all of the capital stock of the Eastern Railway Company of Minnesota, a corporation organized under the laws of the State of Minne- 44 sota, which owns and operates a railway line extending from the cities of St. Paul and Minneapolis to Duluth, Minnesota; and from Duluth, Minnesota, to Bemidji, Minnesota; and by virtue of such ownership of stock said Great Northern Railway Company dictates the policy of said railway company and controls the lines of railway and properties of said East-

45 ern Railway Company, and operates the same as a part of the Great Northern system of railway.

That said Great Northern Railway Company also owns all of the capital stock of the Willmar & Sioux Falls Railroad Company, a corporation owning a railroad extending from Willmar, Minnesota, to Yankton, South Dakota, and by virtue of such ownership of stock, dictates the policy of and owns and controls the railway line and property of said Willmar & Sioux Falls Railroad Company.

That all of the railways and railway lines hereinbefore de-
46 scribed and operated as, and form a complete system under, the name of said Great Northern Railway Company.

That the Charter of said Great Northern Railway Company provides as follows: "That all of the affairs and business of said company shall be conducted by or under the direction of a board of directors, and they are authorized, for the purposes specified in this act, to make and establish regulations and by-laws, and to do all things necessary to be done and not inconsistent with the Constitution and Laws of the United States, or the Laws of this Territory, or this Act."

Plaintiff further alleges that the Board of Directors of said
47 Great Northern Railway Company, at the time of the organization of the Northern Securities Company, hereinbefore referred to, to-wit, on or about the 13th day of November, 1901, was composed of the following named persons, to-wit: James J. Hill, James N. Hill, Samuel Hill, William P. Clough, Edward Sawyer, M. D. Grover, Jacob H. Schiff and Henry W. Cannon; and at said date the managing or executive officers of said corporation were as follows: President, James J. Hill; 1st Vice-President, W. P. Clough; 2d Vice-President, D. Miller; 3d Vice-President, James N. Hill; Treasurer and Assistant Secretary, E. Sawyer; R. I. Farrington, Comptroller,
48 and E. T. Nichols, Secretary and Assistant Treasurer.

That on said last named date said Great Northern Railway Company had issued, and there was then outstanding, a total of One Hundred and Twenty-five Million Dollars, par value, of the capital stock of said corporation, and plaintiff is informed and believes, and upon information and belief alleges, that said James J. Hill was on said last named date the owner of or in possession and control of, or had subject to his direc-

tion and disposition, more than a majority of said capital stock so outstanding. 49

III.

That the Northern Pacific Railroad Company was formerly a corporation organized and existing under and by virtue of an act of the Congress of the United States, entitled "An Act granting land to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific coast, by the northern route." Approved July 2nd, 1864; and a joint resolution of Congress extending the time for the completion of said railroad until July 1st, 1868; and a joint resolution granting the consent of Congress provided for in Section Ten of said Act, incorporating the Northern Pacific Railroad Company; approved March 1st, 1869; the joint resolution of Congress granting the right of way for the construction of a railroad from Portland, Oregon, to a point west of the Cascade Mountains in Washington Territory, approved April 1st, 1869; the joint resolution of Congress authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road, and to secure the same by mortgage, and for other purposes, approved May 31st, 1870. And complainant asks leave to refer to and have each of said acts and resolutions considered as though fully herein set forth. 50 51

That under and in pursuance of the said several acts and joint resolutions of Congress, the Northern Pacific Railroad Company constructed and put into operation, prior to January 1st, 1890, all of its main line of road, extending from Ashland, in the State of Wisconsin, westward across the State of Minnesota, North Dakota, Montana and Idaho, and in the State of Washington to Walla Walla Junction; also all that other part of its main line of railroad extending from Portland, Oregon, to Tacoma, Washington; also the whole of its Cascade Branch, extending from Pasco Junction, in the State of Washington, to Tacoma, in the State of Washington. 52

That said Northern Pacific Railroad Company had also, prior to the said first day of January, 1880, acquired and then owned all the capital stock of the following named railroad companies and corporations, to-wit: The St. Paul & Northern

53 Pacific Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then owned a railroad extending from St. Paul, Minnesota, to Brainerd, Minnesota; and from Little Falls, Minnesota, to Staples, Minnesota; also of the Duluth & Manitoba Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then owned a line of railroad extending from Winnipeg Junction, Minnesota, via Red Lake Falls, Minnesota, to the western boundary line of said state, and thence to Grand Forks, North Dakota; and thence to the international boun-
54 dary line between the State of North Dakota and Canada; also of the Duluth, Crookston & Northern Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then owned a railroad extending from Fertile Junction, Minnesota, through Crookston to Carthage Junction, Minnesota; also of the Little Falls & Dakota Railroad Company, a corporation organized under the laws of the State of Minnesota, and which then owned a railroad extending from Little Falls, Minnesota, to Morris, Minnesota; also of the Northern Pacific, Fergus Falls & Black Hills Railroad Company, a corporation organized under the laws of the State
55 of Minnesota, and which owned a line of railroad extending from Wadena, Minnesota, thence westerly to the western boundary line of the state; and thence to North Dakota, points; also all the capital stock of various railroad corporations or companies organized in the States of North Dakota, South Dakota, Montana and Washington, which owned and operated various railway lines in said states respectively. The said railway lines built by said companies within the State of Minnesota, as well as those built outside the State of Minnesota, and the capital stock of the corporations so building said lines, and owned by said Northern Pacific Rail-
56 road Company, as hereinbefore alleged, were operated, managed and controlled by said Northern Pacific Railroad Company as a system of railway, or railways, extending from and between various points in the State of Minnesota, more specifically hereinafter referred to, through said state and thence to the Pacific coast; and aggregate about four thousand five hundred miles of railway.

That during the year 1893, the said Northern Pacific Rail- 57
road Company became insolvent, and all of the property of said company, of whatever kind or character, was duly placed in the hands of receivers appointed for that purpose by the Circuit Court of the United States for the Eastern District of Wisconsin; and thereafter in proceedings ancillary thereto, by the various circuit courts of the United States in whose jurisdictions said property was located.

That in the year 1895, the defendant, the Northern Pacific Railway Company, was incorporated under and by virtue of the laws of the State of Wisconsin to purchase the said prop- 58
erties of the Northern Pacific Railroad Company, and thereafter filed with the secretary of the state of this plaintiff, a duly authenticated copy of its articles of incorporation as provided by law in that behalf and thereupon became a corporation of and within the State of Minnesota, and subject to all of the laws, regulations and provisions of said State of Minnesota relating to railway or railroad corporations, including those acts or parts of acts hereinafter specifically pleaded or referred to. That after said Northern Pacific Railway Company had filed its said Articles of Incorporation in this state and had become subject to its laws, and during the year 1896, it 59
purchased and became the owner of the entire railroad properties and railway lines, incuding the right of way, rolling stock and capital stock, formerly owned by said Northern Pacific Railroad Company; and immediately thereafter entered into the possession thereof and at all times since has continuously operated subject, however to the dictation and control of the officers of the Northern Securities Company since about the date of its said organization, each and all of the said lines of railway so situated within the State of Minnesota, which lines connect the cities of St. Paul and Minneapolis and Duluth, and various other villages and cities within 60
the State of Minnesota, and connect with the lines of railway outside of said State of Minnesota.

That during the year 1899, said Northern Pacific Railway Company purchased, and ever since has owned and operated, a line of railway extending from the cities of St. Paul and Minneapolis to Duluth, Minnesota; that said last named line parallels and is a competing line of railway for both freight

61 and passenger traffic with the line of railway between said Minneapolis and St. Paul and Duluth, hereinbefore described, and which is owned by said Eastern Railway Company of Minnesota, but operated, controlled and managed by said Great Northern Railway Company as a part of the system of said last named company, as hereinbefore alleged.

That under the Charter or Articles of Incorporation of said Northern Pacific Railway Company, the powers of said company are delegated to and exercised by a board of fifteen directors and at the time of the organization of the said Northern Securities Company the following named persons con-
62 stituted and now are, with the exception of James J. Hill, who has since resigned because disqualified by the laws of this state, the members of the Board of Directors of said last named company: James J. Hill, Robert Bacon, George F. Baker, E. H. Harriman, H. McK. Twombly, Brayton Ives, D. Willis James, John S. Kennedy, Daniel S. Lamont, Charles S. Mellen, Samuel Rea, William Rockefeller, Charles Steele, James Stillman and Eben B. Thomas; and at said date the managing and executive officers of said corporation were, and now are, as follows, viz.: Charles S. Mellen, President; Dan-
63 iel S. Lamont, Vice-President; J. M. Hannaford, Third Vice-President; George H. Earl, Secretary and Assistant Treasurer; C. A. Clark, Treasurer; Henry A. Gray, Comptroller.

That the total amount of capital stock of said Northern Pacific Railway Company then issued and outstanding was one hundred and fifty-five million dollars, divided into shares of one hundred dollars each, seventy-five million dollars of which was preferred and eighty million dollars common stock.

IV.

64 That the lines of railway owned, operated and controlled as aforesaid by said Great Northern Railway Company within the State of Minnesota are parallel and, until the consummation of the scheme or device hereinafter alleged, to merge the management and control of the two systems in the defendant, the Northern Securities Company, were competing lines for freight and passenger traffic with the lines of railway owned, operated and controlled as aforesaid by said

Northern Pacific Railway Company within the State of Min 65
nesota, between the following points (among others) in said state, to-wit: The Cities of St. Paul and Minneapolis and the City of Duluth, Minnesota, and the various cities and villages between said points; also between the Cities of St. Paul and Minneapolis and Crookston, Minnesota, by way of Fergus Falls, and the various cities and villages between said points; also between the Cities of St. Paul and Minneapolis and Crookston by way of Breckenridge, and the towns and cities between said points; and also between the Cities of Duluth and Crookston, and the cities and villages between said 66
points, as well as the country adjacent to the lines of railway between each and all of said cities; and the said lines of railway owned, operated and controlled by said Great Northern Railway Company and also the lines of railway owned, operated and controlled by said Northern Pacific Railway Company which connect with the said lines of railway owned, operated and controlled by each of said companies respectively, within the State of Minnesota, are parallel and competing lines through the States of North Dakota, Montana, Idaho and Washington to Puget Sound on the Pacific coast for passenger and freight traffic. That during all the times aforesaid and 67
until the consummation of the scheme or device aforesaid each and all of said lines of railway were maintained and operated by said respective companies as independent and competitive common carriers of freight and passengers within the State of Minnesota; and that said companies are now, and for upwards of eleven years last past have been, the only railway companies operating lines of railway crossing the State of Minnesota and connecting the Pacific ocean by rail with points in Minnesota; also the only lines of railway traversing east and west the northern tier of states of the United States lying west of the Mississippi river, and connecting such ter- 68
ritory and territory tributary thereto by rail with the Pacific ocean; and, with one exception, the only lines of railway crossing the north half of the State of Minnesota in any direction.

69 V.

Plaintiff further alleges that by an Act of the Congress of the United States, of March 12, 1860, extending to the State of Minnesota the Swamp Lands Grant theretofore made to the State of Arkansas, and by various subsequent acts, the Congress of the United States donated to the State of Minnesota, from the Public Domain, large quantities of lands situated within the State of Minnesota, and of the value of several millions of dollars. That the State of Minnesota now has
70 left and undisposed of more than three million acres of said lands, of the value of more than Fifteen Million Dollars, much of which said land is located in the territory traversed by the railroads of the Great Northern and Northern Pacific Railway Companies, as hereinbefore alleged. That the value of said land, and the salability thereof, depends in very large measure upon having free, uninterrupted and open competition in passenger and freight rates over the lines of railway owned and operated by said Great Northern and Northern Pacific Railway Companies.

That many of said lands are vacant and unsettled and lo-
71 cated in regions not at present reached by railway lines, and depend for settlement upon the construction of lines in the future; that it has heretofore been the practice of said Great Northern and Northern Pacific Railway Companies, respectively, to extend spur lines into territory adjacent to each of said roads, as well as into new territory, for the purpose of developing such territory, as well as to obtain traffic therefrom; that such new lines have been built in the past very largely by reason of the rivalry heretofore existing between said companies, for existing, as well as new, business; that under the consolidation and unity of control hereinafter set
72 forth, such rivalry will cease, and many of the lands now owned by the State of Minnesota will not be reached by railroads for years to come, if at all, owing to such combination and consolidation removing all rivalry and competition between said companies; that the settlement and occupation of said lands will add very much to their value and such occupation will depend entirely upon the accessibility of railway lines and transportation facilities for marketing the products

raised thereon; that if said lands are sold and become occu- 73
pied, they will add very largely to the taxable value of the property of the state, and that said lands cannot be so sold or the income of the state increased thereby without the construction of railroad lines to, or adjacent to, the same.

VI.

That the State of Minnesota is now and for many years past has been the owner of, and continuously maintained, an educational institution for the benefit of its citizens, known 74
as the University of Minnesota; also a large number of hospitals for the insane, within its territorial limits; also five normal schools for the education of teachers within the state; also a State Training School for Boys and Girls; also several state schools for the education, care and maintenance of the deaf, dumb, blind and feeble-minded; also a state school for indigent and homeless children; also a state penitentiary and reformatory.

That for many years past the State of Minnesota has continuously maintained and supported each of said institutions, and in the care, maintenance and management thereof has 75
been compelled to and in the future, of necessity, will annually purchase large quantities of supplies for said institutions, including provisions, clothing and fuel, a great portion of which the State of Minnesota is compelled to ship over the different lines of railway owned and operated by the Northern Pacific Railway Company and Great Northern Railway Company.

That the State of Minnesota is compelled to expend annually more than Seven Hundred Thousand Dollars in the operation and maintenance of said public institutions, most of
which sum is raised by general taxation upon the lands and 76
other property of the citizens of the State of Minnesota, and situated therein. That the amount of taxes which said State of Minnesota can collect, and the successful maintenance of its said public institutions, as well as the performance of its governmental functions and affairs, depends largely upon the value of the real and personal property situated within the territorial limits, and the general prosperity and business

77 success of its citizens. That the value of said real and personal property of the citizens of the State of Minnesota, as well as their business success and general prosperity, depend very largely upon maintaining in said state free, open and unrestricted competition between the railway lines of said Great Northern and Northern Pacific Railway Companies respectively within said state.

VII.

78 That it has been the settled policy and practice of the State of Minnesota since its organization as a territory, to develop the resources of the state by encouraging railroad building therein, and in furtherance of this policy, the Territory of Minnesota, by an act thereof, under date of May 22nd, 1857, granted to the Minnesota & Pacific Railroad Company a charter, and in consideration of the construction and maintenance of a line of railway in Minnesota, by said company, said Territory donated to it out of its public domain about seven hundred thousand acres of land. That said Minnesota & Pacific Railroad Company thereafter became insolvent, and all its
79 property was placed in the hands of a receiver; that such proceedings were thereafter had that all the property of the last named company, including said land, was duly sold and conveyed to the St. Paul, Minneapolis & Manitoba Railway Company, hereinbefore mentioned.

That the State of Minnesota, by an act of its legislature, and in consideration of the construction and maintenance of a line of railway by the Great Northern Railway Company, hereinbefore referred to, between St. Cloud and Hinckley, a distance of eighty-four miles, donated and conveyed to said last named company upwards of four hundred thousand acres
80 of land then owned by and situated in the State of Minnesota, which said land was then worth more than One Million Dollars. That in carrying out said policy, and in aid of the building of railways within the State of Minnesota, there has been granted out of the public domain within the limits of the State of Minnesota, upwards of 10,500,000 acres of land, nearly all of which has been granted to said Great Northern

and Northern Pacific Railway Companies, and the subsidiary companies owned and controlled by them. 81

VIII.

That by an act of the legislature of the State of Minnesota, approved March 3rd, 1881, entitled "An Act Granting Swamp Lands to Aid in the Construction of the Main Line of the Road of the Little Falls & Dakota Railway Company," and which now is a part of the Northern Pacific Railway Company system, hereinbefore referred to, the State of Minnesota donated to said Little Falls & Dakota Railway Company. Two Hundred Forty-three Thousand Five Hundred and Ninety-one (243,591) acres of land situated in and then belonging to said state, in consideration of the construction and maintenance by said last named railway company of a line of railway extending from Little Falls to Morris, in the State of Minnesota. 82

IX.

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Plaintiff further alleges that immense quantities of wheat and other products are shipped annually from East Grand Forks, Crookston, Moorhead, Fergus Falls, and other competitive points within the State of Minnesota, and all on the lines of railway of the said Great Northern and Northern Pacific Railway Companies, hereinbefore referred to, to the cities of Duluth, St. Paul and Minneapolis, within the State of Minnesota. That nearly all of the shipments of such products made from the above named initial points are consigned to various citizens at either the city of Duluth, St. Paul or Minneapolis over one or the other of said railroad lines of railroad last above named. That enormous quantities of merchandise have been and will continue to be shipped annually, over said lines of railway, between the cities of St. Paul and Minneapolis and various other cities and villages along said lines of railway situated within the State of Minnesota, and which are purchased and used entirely by the people of said state. That the competition in both freight and passenger 84

85 traffic to and from said places has always been sharp and active between said railway companies, and has secured to the residents of said cities, as well as the State of Minnesota, and to the State of Minnesota itself, much lower rates for both freight and passengers than would otherwise have been obtained or than will or can be obtained in case the consolidation or unity of control and management of said Great Northern and Northern Pacific Railway Companies hereinafter alleged, is not enjoined as herein prayed.

86 X.

Plaintiff further alleges that it has ever been a part of the settled and public policy of the State of Minnesota to prohibit therein, in any way, the consolidation in any manner of competing and parallel lines of railway; and to this end the Legislature of the State of Minnesota did, in the year 1874, pass the following enactment, which ever since has remained and now is a part of the Statute Law of the State of Minnesota, known as Chapter 29 of the General Laws of 1874, to-wit:

"Section 1. No railroad corporation, or the lessees, pur-
87 chaser or managers of any railroad corporation, shall consolidate the stock, property or franchise of such corporation with, or lease or purchase the works or franchise of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line, and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues.

88 "Sec. 2. This act shall take effect and be in force from and after its passage.

"Approved March 9, 1874."

That in the year 1881, the Legislature of the State of Minnesota passed the following enactment, which ever since has remained and now is a part of the Statute Law of the said State and known as Chapter 94 of the General Laws of 1881, to-wit:

"Section 3. No railroad corporation shall consolidate with, lease or purchase, or in any way become the owner of or control any other railroad corporation or stock, franchises, rights or property thereof, which owns or controls a parallel or competing line. 89

"Sec. 4. This act shall take effect and be in force from and after its passage.

"Approved March 3rd, 1881."

That in the year 1899, the Legislature of the State of Minnesota passed the following enactment, which ever since has remained and now is a part of the Statute Law of said State, and known as Chapter 359 of the General Laws of 1899, to wit: 90

"Section 1. Any contract, agreement, arrangement, or conspiracy, or any combination in the form of a trust, or otherwise, hereafter entered into which is in restraint of trade or commerce within this State, or in restraint of trade or commerce between any of the people of this State and any of the people of any other State or Country, or which limits or tends to limit or control the supply of any article, commodity or utility, or the articles which enter into the manufacture of any article [of] utility, or which regulates, limits or controls or raises or tends to regulate, limit, control or raise the market price of any article, commodity or utility, or tends to limit or regulate the production of any such article, commodity or utility, or in any manner destroys, limits or interferes with open and free competition in either the production, purchase or sale of any commodity, article or utility is hereby prohibited and declared to be unlawful. 91

That when any corporation heretofore or hereafter created, organized or existing under the laws of this State, whether general or special, hereafter unites in any manner with any other corporation wheresoever created, or with any individual, whereby such corporation surrenders or transfers, by sale or otherwise, in whole or in part, its franchise, rights or privileges or the control or management of its business to any other corporation or individual, or whereby the business management or control of the business of such corporation is limited, changed or in any manner affected, and the purpose or effect of such union or combination is to limit, control or destroy competition in the manufacture or sale of any article 92

93 or commodity, or is to limit or control the production of any article or commodity, or is to control or fix the price or market value of any article or commodity or the price or market value of the material entering into the production of any article or commodity, or in case the purpose or effect of such union or combination is to control or monopolize in any manner the trade or commerce, or any part thereof, of this State or of the several States, such union, combination, agreement, arrangement or contract is hereby prohibited and declared to be unlawful.

* * * * * *

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Sec. 3. Any corporation heretofore or hereafter created, organized or existing under the laws of this State which shall hereafter either directly or indirectly make any contract, agreement or management, or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, forfeit its charter, rights and franchises, and it shall thereafter be unlawful for such corporation to engage in business, either as a corporation or as a part of any combination, trust or monopoly, except as to the final disposition of its
95 property under the laws of this state.

* * * * * *

Sec. 6. That for the purpose of carrying out the provisions of this act, any citizen of this State may, and it is hereby declared to be the duty of the Attorney General to, institute, in the name of the State, proceedings in any court of competent jurisdiction against any person, partnership, association or corporation who may be guilty of violating any of the provisions of section one (1) of this act, for the purpose of imposing the penalties imposed by this act, or securing the enforce-
96 ment of section three (3) hereof.

Sec. 8. This act shall take effect and be in force from and after its passage.

Approved April 21st, 1899."

XI.

Plaintiff further alleges upon information and belief that the defendant the Northern Securities Company was incor-

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porated as aforesaid pursuant to an understanding and agree- 97
ment between the defendant James J. Hill and certain other officers of, and stockholders in, the defendant the Great Northern Railway Company, whose names are unknown to plaintiff but who, at that time, and at the time of said organization, owned and controlled a majority and controlling interest in the capital stock of said Railway Company, and in that behalf were acting, for themselves as such stockholders and the said Railway Company, with the knowledge and consent, if not with the formal authority, of its board of directors and executive officers, and were acting in that behalf in conjunction
and collusion with certain officers of, and stockholders in, the 98
defendant the Northern Pacific Railway Company, whose names are unknown to the plaintiff other than J. Pierpont Morgan, who, at that time, and at the time of said organization, owned and controlled a majority and controlling interest in the capital stock of said Northern Pacific Railway Company, and in that behalf were acting, for themselves as such stockholders, and the said Railway Company, with the knowledge and consent, if not with the formal authority, of its board of directors and executive officers; and plaintiff upon information and belief further alleges, and charges the fact to 99
be, that the said Northern Securities Company was incorporated under and pursuant to the understanding and agreement aforesaid, solely as an instrumentality through and by means of which the stock, property and franchises of the said Great Northern and Northern Pacific Railway Companies should be consolidated in effect, if not in form, and the management and control of the business affairs of said corporations, respectively, including the fixing of rates and charges for the transportation of passengers and freight over any and all the lines of railway of each of said companies, as well within as without the State of Minnesota, should be vested 100
in and controlled by said Securities Company, its officers and executive committee, and all competition in freight and passenger traffic between said two systems of railway, as well within as without the State of Minnesota, be suppressed and removed; and by means of which it was sought and intended by the promoters and organizers thereof to ignore, evade and violate the laws of this State prohibiting the consolidation of the stock, property or franchise of parallel or competing lines

of railway therein, or of the control or management thereof, and prohibiting all combinations in restraint of trade or commerce within this State, and restraint of trade and commerce between the people of this State and the people of other states and countries, and if said Northern Securities Company is allowed to hold and control the stocks of said Railway Companies and to carry out the purpose and object of its incorporators, as well as its own, full faith and credit will not be given to the public acts of this complainant and it will be deprived of a further right guaranteed to it by the constitution of the United States.

XII.

To carry out and accomplish the purposes aforesaid, and to effect a consolidation of the railway systems of the Great Northern and Northern Pacific Railway Companies, as well within as without this State, and the management and control thereof, and to suppress all competition between said systems, it was agreed by and between the parties aforesaid and their associate stockholders and the persons who thereafter became the officers and directors of the Northern Securities Company, that a corporation to be called the "Northern Securities Company" should be organized under the laws of the State of New Jersey with an authorized capital stock which should be sufficient to represent and cover the authorized capital stock of the said Great Northern Railway Company at a valuation of one hundred and eighty dollars per share of said stock, and the authorized capital stock of the said Northern Pacific Railway Company at a valuation of one hundred and fifteen dollars per share of said stock, and be empowered by its articles to acquire the capital stock of the two railway systems, and while owner thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon; and to conduct business in other states; and that upon the completion of the organization of said Northern Securities Company, that company should exchange without other consideration its capital stock for the capital stock of said Great Northern and Northern Pacific Railway Companies on the basis of one share of the capital stock of the Great Northern Railway Company for one and 80-100 shares of

the capital stock of said Northern Securities Company, and 105
one share of the common stock of said Northern Pacific Railway Company for one and 15-100 shares of the capital stock of said Northern Securities Company.

To more effectually and certainly carry out the said unlawful plans and purposes of said James J. Hill and his said associate stockholders in the Great Northern Railway Company, and said J. Pierpont Morgan and his said associate stockholders in the Northern Pacific Railway Company, it was agreed between them, acting for themselves as the holders of the majority of the common stock of said Northern Pacific Railway 106
Company, and on behalf of the directors of said company, that the $75,000,000 of the preferred stock of said Northern Pacific Railway Company should be retired in accordance with the provisions of the Articles of Incorporation of said Northern Pacific Railway Company, and the conditions and agreements under which the same was issued; said retirement to take place on the 1st day of January, 1902. The funds for retiring said preferred stock to be raised by the issuance by said Northern Pacific Railway Company of its negotiable bonds, bearing date November 15th, 1901, of the aggregate amount of Seventy-five Million Dollars, payable January 1st, 107
1907, in gold coin of the United States, with interest thereon at the rate of four per cent per annum, payable semi-annually in like gold coin, from and after January 1st, 1902. The said bonds, however, to be convertible at the option of either the holders thereof, or said Railway Company, into shares of the common stock of said Northern Pacific Railway Company at the rate of one share of stock for each One Hundred Dollars of the principal sum of such bonds, and the said common stock, when so taken in exchange for such bonds, to be converted into stock of said Northern Securities Company upon the basis of one share for each one and 15-100 shares of stock of 108
said Northern Securities Company.

That said preferred stock could only be retired by resolution of the Board of Directors of said Northern Pacific Railway Company; that a very large majority of said preferred stock was owned by certain individuals who were opposed to the agreement and plan herein referred to relative to turning over the management and control of said Northern Pacific

Railway Company to said Northern Securities Company, and the holding of its stock by said Northern Securities Company; that the owners of said preferred stock so opposed to said agreement and plan were also owners of sufficient of the common stock of said Northern Pacific Railway Company to give them a small majority of the total capital stock of said Northern Pacific Railway Company; thus making it necessary, in order to carry out the plan and agreement herein set forth and to vest the management and control of said Northern Pacific Railway Company in said Northern Securities Company in the manner and for the purposes herein alleged, to retire said preferred stock; all of which was well known to the Board of Directors of said Northern Pacific Railway Company and to said J. Pierpont Morgan and his associate stockholders of said Northern Pacific Railway Company, as well as said Northern Securities Company.

That on or about the 13th day of November, 1901, the Board of Directors of said Northern Pacific Railway Company took such official action as was necessary to retire said preferred stock upon the basis and in accordance with the plan and agreement herein set forth; and thereafter said preferred stock was retired by the issuance of the convertible bonds to the amount and in the manner herein alleged. That immediately after the retirement of said preferred stock, said Northern Pacific Railway Company, acting through its Board of Directors and executive officers, exercised its right and option of declaring said bonds to be convertible into shares of the common stock of said Northern Pacific Railway Company, and thereupon the same were so converted and the common stock of said Northern Pacific Railway Company issued in exchange therefor, upon the basis and for the purposes herein alleged. That in order to prevent the persons who owned said preferred stock, and who were opposed to the carrying out of the plan and agreement herein referred to, from acquiring a like control of the common stock, it was provided that the $75,000,000 of common stock into which the said bonds were convertible could only be subscribed for and taken by holders of the then outstanding $80,000,000 of the common capital stock of said Northern Pacific Railway Company; each share of said common stock then outstanding

entitling the owner and holder thereof to take an additional 113
seventy-five eightieths of a share of said $75,000,000 additional common stock. That the retirement of said preferred stock and the conversion of the said bonds into common stock of said Northern Pacific Railway Company, and the exchange of said common stock for stock of said Northern Securities Company, as herein alleged, were each and all a part of the agreement, plan and scheme of said J. Pierpont Morgan and his said associate stockholders of said Northern Pacific Railway Company who then and there owned and controlled a large majority of the then outstanding common 114
stock of said Northern Pacific Railway Company, under and by which the complete management and control of said Northern Pacific Railway Company was to be, and was thereafter turned over to and vested in said Northern Securities Company in order that said Northern Pacific Railway Company, its property and franchises, might be in effect consolidated with the property and franchises of said Great Northern Railway Company, as herein alleged. That said James J. Hill and his associate stockholders of said Great Northern Railway Company had full knowledge of and assisted in retiring said preferred stock for the purposes and objects 115
herein alleged. That as a part of said agreement and plan entered into between said James J. Hill and his associate stockholders and said J. Pierpont Morgan and his associate stockholders, each and all of whom were then, and are now, acting in concert for the purpose of evading and violating the laws of the State of Minnesota, in the manner, for the purposes, and with the object and design, herein set forth, and in furtherance of said purposes and design, and to avoid the effect of any litigation which might be instituted to defeat the consummation of the agreement, plan and scheme
herein referred to of vesting the complete management and 116
control of the railway lines, properties and franchises of said Great Northern and Northern Pacific Railway Companies in said defendant Northern Securities Company, said parties further undertook and agreed with each other and the persons who thereafter became the officers and directors of the defendant Northern Securities Company that the pending delivery and transfer of a majority of the capital stock of

said Great Northern Railway Company to said Northern Securities Company, the same should be held by or under the control of some person or corporation to the plaintiff unknown; and that pending such delivery it was mutually agreed between said Hill and his associate stockholders and said Morgan and his associate stockholders and the persons who thereafter became the directors and officers of the defendant, as well as the person or corporation so temporarily holding said stock that the same should be held during said period for the purposes above set forth in trust for the use and benefit of the defendant the Northern Securities Company; and that during such time the parties so holding said stock should attend and vote the same at all meetings of the stockholders of said Great Northern Railway Company, in the interests of the defendant, and as directed by the Board of Directors of said Northern Securities Company or the executive committee thereof, or in unison with the stock of said railway companies, actually assigned to and held by the defendant. That said Northern Securities Company has not purchased, and does not intend to purchase, the stock or any part of the stock of either of said railway companies, except by issuing its stock in exchange for and in lieu of the stock of said railway companies on the basis and in the manner and for the purposes herein alleged.

That for the unlawful purposes aforesaid the said Northern Securities Company, by circular letter heretofore issued to the public (hereinafter more particularly referred to) has offered and is still offering to issue and exchange for the capital stock of the said Great Northern and Northern Pacific Railway Companies, capital stock of said Northern Securities Company to the amount of One Hundred and Eighty Dollars par value thereof for each share of capital stock of said Great Northern Railway Company and to the amount of One Hundred and Fifteen Dollars par value thereof for each share of stock of said Northern Pacific Railway Company. And that the said Northern Securities Company is about to receive, on the basis aforesaid, and will, unless enjoined therefrom, receive, hold and hereafter control all the capital stock of said Great Northern and Northern Pacific Railway Companies.

That on the basis of exchange aforesaid, the former stock- 121
holders of the Great Northern Railway Company have received, or will receive, about fifty-five (55) per cent of the stock of the Northern Securities Company, and the former owners of the common stock of the Northern Pacific Railway Company, have received, or will receive, the balance of said Northern Securities Company stock.

XIII.

That after the organization of said Northern Securities Company, to-wit, on the 14th day of November, 1901, in fur- 122
therance of the unlawful agreement hereinbefore alleged, the following named persons were elected as, and now constitute, the Board of Directors thereof: For the term of one year, James J. Hill (the defendant herein), George F. Baker, Daniel S. Lamont, James Stillman and James Lee; for the term of two years, Charles E. Perkins, Jacob H. Schiff, William P. Clough, Samuel Thorne; for the term of three years, John S. Kennedy, D. Willis James, E. T. Nichols, Robert Bacon and E. H. Harriman; and on the fifteenth day of November, 1901, in further pursuance of said agreement the said 123
directors met and elected as executive officers of said Northern Securities Company the following persons, who are still respectively, the officers thereof, to-wit: President, James J. Hill (the defendant herein); First Vice-President, John S. Kennedy; Second Vice-President, George F. Baker; Third Vice-President, D. Willis James; Fourth Vice-President, William P. Clough; Secretary and Treasurer, E. T. Nichols. That at said meeting the said directors duly appointed an executive committee, of which committee the defendant, James J. Hill, was duly appointed chairman, and has ever since been, and is now, acting as chairman thereof; and in said com- 124
mittee, by virtue of said Articles of Incorporation and of the by-laws of said corporation, is vested all the powers and duties of the said Board of Directors.

XIV.

That at the time of his said election as the president of the Northern Securities Company, the defendant James J. Hill

was the president of, and the principal and controlling stockholder in, the defendant the Great Northern Railway Company, and was at that time one of the directors of the defendant the Northern Pacific Railway Company; that William P. Clough, Fourth Vice-President of the Northern Securities Company, was the First Vice-President of the Great Northern Railway Company, and, at the time of said organization, was a large stockholder in said Great Northern Railway Company; that E. T. Nichols, the Secretary and Treasurer of the Northern Securities Company, was, and still is, the Secretary and Assistant Treasurer of the Great Northern Railway Company; that the following named officers and directors of said Northern Securities Company were, at the time of the organization of said company and ever since have been, directors of the defendant the Northern Pacific Railway Company, viz., Robert Bacon, E. H. Harriman, George F. Baker, Daniel S. Lamont, James Stillman, D. Willis James, John S. Kennedy; that the following named officers and directors of the said Northern Securities Company were, at the time of the organization thereof, directors of the defendant the Great Northern Railway Company, viz., James J. Hill, William P. Clough, Jacob H. Schiff, E. T. Nichols.

XV.

That the organization of said Northern Securities Company in the manner hereinbefore alleged, and the making of said agreement or arrangement hereinbefore referred to, are each and all a part of a scheme or plan on the part of said James J. Hill and his said associate stockholders of the Great Northern Railway Company, and J. Pierpont Morgan and his said associate holders of the stock of said Northern Pacific Railway Company, under and by which the said two last named Railway Companies are to be in effect consolidated, and the complete management and control of the business affairs of said corporations respectively placed in one body and under the direction and control of one man or one Board of Directors, through and by means of said defendant. That pursuant to said plan, agreement and arrangement, and in consummation thereof, and for the purpose of plac-

ing the complete management and control of said Great 129
Northern Railway Company and said Northern Pacific Railway Company under one management, and for the purpose of establishing, in effect, a consolidation of said railway companies, together with said railway lines and properties, in and through said defendant, the said J. Pierpont Morgan and his associate stockholders have actually assigned and delivered to said Northern Securities Company upwards of 90 per cent of the total capital stock of said Northern Pacific Railway Company; and plaintiff alleges, on information and belief, that said James J. Hill and his associate 130
stockholders of said Great Northern Railway Company, have also actually assigned and delivered to said Northern Securities Company upwards of 75 per cent of the capital stock of said Great Northern Railway Company. That the sole purpose, object and effect of the transfer of said stock by said James J. Hill and his said associates and said J. Pierpont Morgan and his said associates to said Northern Securities Company was and is to transfer to and vest in said defendant Northern Securities Company the complete management and control of the respective lines of railway and railway properties of each of said Railway Companies within 131
and without the State of Minnesota, and to place the complete management and control of the same, and the power to dictate the policy of each of said corporations, as well as the power and authority to fix rates and charges for the transportation of both freight and passengers within the State of Minnesota, as well as without said state, in the hands of and under the control of one party or Board of Directors, and thereby create, foster and perpetuate a monopoly in railway traffic in the State of Minnesota.

That the purpose, object and effect of the incorporation of 132
the defendant and the receipt by it of a controlling amount of the capital stock of the said Northern Pacific and Great Northern Railway Companies, as well as each act of the officers and Board of Directors thereof, in entering into, adopting or executing the agreement or plan herein set forth, including the issuance and exchange of the capital stock of the Northern Securities Company for the stock of the said

Northern Pacific and Great Northern Railway Companies on the basis herein set forth, was and is to place the said railway companies and the property and franchises thereof under single management, and enable a single party or body of men acting as the Board of Directors of the said Northern Securities Company, or such Executive Committee as they may designate, to fix all rates and charges for the transportation of passengers and freight over any and all the lines of railway of each of said companies within the State of Minnesota; to determine what trains shall be operated over each or any of the lines of railway of each of said railway companies, and to remove all competition in freight or passenger traffic over said parallel and competing lines, and prevent the building of lines into new territory as well as into the territory now reached by only one of said lines of railway; that the purpose of said agreement and of the parties thereto was the creation of a trust or the formation of a combination by which a monopoly of railway traffic in Northern Minnesota and elsewhere will be perfected; that the defendant company was organized for, and is to be used as, a medium through and by which this unlawful agreement, purpose and object can, and, if not enjoined, will, be accomplished; that this agreement and the consummation thereof is in restraint of trade, tends to create a monopoly in railway traffic and is against public policy and void.

That the holders of a large majority of the capital stock of both said Great Northern and Northern Pacific Railway Companies and the officers and directors of each of said companies had knowledge of, consented to, and assisted in carrying out the agreement, arrangement and scheme herein set forth by which a large majority of the capital stock of each of said railway companies was to be and has in fact been exchanged for the capital stock of said Northern Securities Company upon the basis and for the purposes herein set forth; and the said stockholders of said Great Northern and Northern Pacific Railway Companies so consenting to, taking part and assisting in the formation of said Northern Securities Company and the perfecting of the agreement and scheme herein set forth, constitute all of the stockholders of said Northern Securities Company; and the Board of Di-

rectors and executive officers of said Northern Securities 137
Company hereinbefore named have been selected from and
elected by such stockholders of said Great Northern and
Northern Pacific Railway Companies.

XVI.

In furtherance of the unlawful agreement and scheme
herein alleged, the said Northern Securities Company (which
is a railroad corporation within the meaning of the laws of
this state) on or about December 15th, 1901, through its presi- 138
dent, James J. Hill, caused to be issued a circular letter to
all the several holders of the stock of the Great Northern
and Northern Pacific Railway Companies who had not there-
tofore exchanged their stock for the stock of the said Secu-
rities Company, stating the organization of said company, the
amount of its capital stock, its willingness to become the
owner of any and all outstanding stock of the said Great
Northern and Northern Pacific Railroad Companies in ex-
change for the stock of said Securities Company, upon the
basis of exchange hereinbefore alleged; that said Securities
Company had already received in exchange, on the basis 139
stated, the holdings of a number of the larger holders of
the stock of said railway companies, and advising and in-
viting such exchange; and plaintiff further alleges, upon in-
formation and belief, that at said date a controlling interest
in the stock of both said railway companies had been ex-
changed, or had been delivered for exchange, upon the basis
aforesaid, without other consideration, for the stock of said
Securities Company, and that since about said date the
Northern Securities Company, through its directors and
executive officers, has been and now is directing and man-
aging the business and property of both said Great North- 140
ern and Northern Pacific Railway Companies, and has been
and now is determining and enforcing freight and passen-
ger rates on the lines of railway of said companies in the
State of Minnesota, together with the manner and means
of handling the freight and passenger business of said com-
panies on such lines of railway, and of the earnings of said

141 railway companies, and will continue so to do unless enjoined as herein prayed.

XVII.

Plaintiff further alleges, upon information and belief, that no capital whatsoever was contributed in the organization of said Northern Securities Company, and that none was intended or contemplated to be contributed by the parties interested therein; that said Northern Securities Company
142 has no property or assets of any kind or character save and except the interests acquired under and by virtue of the interchange of the capital stock of said company for the capital stock of the said railway companies, as hereinbefore alleged, and that it was organized solely and exclusively by its said promoters and organizers to take over by exchange, without other consideration, all the capital stock of each of said railway companies, and the earnings thereof, and, by this device, to substitute for the separate and independent management and control of said railway companies, by their respective stockholders, officers and directors, the management and con-
143 trol of the Northern Securities Company, and to invest in said Northern Securities Company the selection of the officers and directors of each of said railway lines, and the control and disposition of the earnings of each of said lines.

XVIII.

Plaintiff further alleges that the scheme to bring about and effectuate the consolidation in effect, if not in form, of the said two railway systems, and the management and control thereof as hereinbefore alleged, and for the purposes and
144 with the intent alleged, has been consummated, and said two railway systems are now under the absolute management and control of the defendant, the Northern Securiites Company, its directors and officers, and by reason thereof all competition between said lines has been destroyed and a monopoly in railway traffic in Minnesota (as well as without said state) has been created, to the great and permanent and irreparable damage of the State of Minnesota, and to the peo-

ple thereof, and in violation of its laws, and of the laws of 145
the United States in such case made and provided, viz.: The Act of Congress approved July 2, 1890, entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies."

XIX.

That in carrying out the agreement and plan of consolidation and monopoly herein alleged by and between the dedefendant James J. Hill and his associate stockholders in the 146
defendant, the Great Northern Railway Company, and J. Pierpont Morgan and his associate stockholders in the defendant, the Northern Pacific Railway Company, and in every step taken to consummate said agreement, the officers and directors of each of said railway companies were severally fully advised and consented thereto, and, unless restrained by this court, the defendant, the Northern Securities Company, will continue to manage and control the business and affairs of said Great Northern and Northern Pacific Railway Companies, and to suppress all competition between them for freight and passenger traffic, as well as otherwise, and to monopolize 147
railway traffic in this state,—to the irreparable damage of the state and the people thereof.

WHEREFORE, Plaintiff demands judgment:

1. That it be adjudged and decreed that the agreement and combination hereinbefore alleged is unlawful, and all acts done and to be done in pursuance thereof are contrary to and in violation of the laws of this state and of the United States.

148

2. That the defendant, the Northern Securities Company, its stockholders, officers, directors, executive committees, and its agents and servants, and each and every one of them, be perpetually enjoined from acquiring, receiving, holding, voting (whether by proxy or otherwise), or in any manner acting as the owner of any of the shares of the capital stock of either the Northern Pacific Railway Company or the Great Northern Railway Company;

149 From voting at any meeting of the stockholders of either said Great Northern or Northern Pacific Railway Companies any of the capital stock of either of said companies, by any means or in any manner whatsoever, and from attending, by reason of such ownership, possession or control of stock, either through its officers or by proxy, or in any other manner, any meeting of the stockholders of either of said companies;

From in any way aiding, advising, directing, interfering with or in any way taking part, directly or indirectly, in any
150 manner whatsoever, in the management, control or operation of any of the lines of railway of either of said companies; or in the management or control of the affairs of either of said companies;

Or from exercising any of the powers, or performing any of the duties, or in any manner acting as a representative, officer, member of the Board of Directors, or employee of either said Great Northern or Northern Pacific Railway Company, or in any way exercising any management, direction, or control over the same.

151 3. That the defendant, the Northern Pacific Railway Company, its stockholders, officers, directors, agents and servants, and each and every one of them, be perpetually enjoined from, in any manner, recognizing or accepting the Northern Securities Company as the owner or holder of any shares of its capital stock, and from permitting such company to vote such stock, whether by proxy or otherwise, and from paying any dividends upon such stock to said company or its assigns, and from recognizing as valid any transfer, mortgage, pledge or assignment by such company of such stock.

152 From in any wise combining with said Great Northern Railway Company, whether such combination be attempted to be effected directly and through the medium of the corporate bodies themselves, or through the action of the constituent members or stockholders of said companies, and that said defendant, its directors, officers, agents, attorneys and employees be similarly enjoined from effecting or consummating any form of combination or agreement which shall disturb the independent integrity of said defendant and its independ-

ent management and control, whether such agreement shall take on the form herein alleged, or any other form, and that hereunder the defendant Northern Pacific Railway Company, its officers, directors, agents, attorneys and employees be similarly enjoined from entering into any agreements, directly or indirectly, destroying free and unlimited competition between said defendant and said Great Northern Railway Company by interchange of traffic, poolings of earnings or division of profits, or otherwise. 153

4. That the defendant, the Great Northern Railway Company, its stockholders, officers, directors, agents and servants, and each and every one of them, be perpetually enjoined from in any manner recognizing or accepting the Northern Securities Company as the owner or holder of its capital stock, and from permitting such company to vote such stock, whether by proxy or otherwise, and from paying any dividends upon such stock to said company or its assigns, and from recognizing as valid any transfer, mortgage, pledge or assignment by such owner of such stock. 154

5. From in anywise combining with said Northern Pacific Railway Company, whether such combination be attempted to be effected directly and through the medium of the corporate bodies themselves, or through the action of the constituent members or stockholders of said companies, and that said defendant, its directors, officers, agents, attorneys, and employees be similarly enjoined from effecting or consummating any form of combination or agreement which shall disturb the independent integrity of said defendant and its independent management and control, whether such agreement shall take the form herein alleged, or any other form; and that hereunder defendant Great Northern Railway Company, its officers, directors, agents, attorneys, and employees be similarly enjoined from entering into any agreement or agreements, directly or indirectly, destroying free and unlimited competition between said defendant and said Northern Pacific Railway Company, by interchange of traffic, pooling or earnings or division of profits or otherwise. 155 156

157 6. That the defendant James J. Hill be enjoined, individually, and as an officer and director of the defendant, the Great Northern Railway Company, from paying or permitting, any dividend or dividends to be paid out of the earnings or treasury of said railway company upon stock of said railway company held by the defendant, the Northern Securities Company, taken by it in exchange for the stock of said railway company, and, as an officer or director of said railway company, from receiving at any directors' or stockholders' meeting of said railway company, the vote of
158 any shares of the stock of said railway company taken by said Securities Company in exchange for its stock, and, as an officer or director or stockholder in said Northern Securities Company, dictating the policy of, or directing or controlling the rates of, transportation, or the business affairs of either of the defendant railway companies.

7. For such other further relief as the nature of the case may require and the Court may deem proper in the premises.

M. D. MUNN, WALLACE B. DOUGLAS,
GEO. P. WILSON, Attorney General.
159 Of Counsel.

STATE OF MINNESOTA,

ss.

County of Ramsey.

WALLACE B. DOUGLAS, being first duly sworn, deposes and says that he is the Attorney General of the State of Min-
160 nesota; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

WALLACE B. DOUGLAS.

Subscribed and sworn to before me this 4th day of April, 1902.

W. J. DONAHOWER,
(Seal) Notary Public, Ramsey Co., Minn.

161

STATE OF MINNESOTA,

ss.

County of Ramsey.

I hereby certify and return, that at the City of St. Paul, County and State aforesaid, on the 14th day of April, A. D. 1902, I served the summons and complaint hereto attached upon the within named Great Northern Railway Company personally, by handing to and leaving with E. Sawyer, Treasurer of said Railway Company, a true and correct copy thereof.

162

PHILIP C. JUSTUS,
Sheriff of Ramsey County, Minn.
By Chas. Reichow, Deputy.

Dated this 14th day of April, 1902.

Sheriff's fee, service.....$ .50
Travel .....

$ .50

163

STATE OF MINNESOTA,

ss.

County of Ramsey.

I hereby certify and return, that at the City of St. Paul, County and State aforesaid, on the 14th day of April, A. D. 1902, I served the summons and complaint hereto attached upon the within named Northern Pacific Railway Company personally, by handing to and leaving with Charles S. Mellen, President of said Railway Company, a true and correct copy thereof.

164

PHILIP C. JUSTUS,
Sheriff of Ramsey County, Minn.
By Chas. Reichow, Deputy.

Dated this 14th day of April, 1902.

Sheriff's fee, service.....$ .50
Travel ..... .40

$ .90

165 STATE OF MINNESOTA,

ss.

County of Ramsey.

I hereby certify and return, that at the City of St. Paul, County and State aforesaid, on the 4th day of April, A. D. 1902, I served the summons and complaint hereto attached upon the within named Northern Securities Company personally, by handing to and leaving with James J. Hill, President of said Company, a true and correct copy thereof.

166 PHILIP C. JUSTUS,
Sheriff of Ramsey County, Minn.
By Chas. Reichow, Deputy.

Dated this 4th day of April, 1902.

Sheriff's fee, service.....$1.00
Travel .....)

$1.00

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167 STATE OF MINNESOTA,

ss.

County of Ramsey

I hereby certify and return, that at the City of St. Paul, County and State aforesaid, on the 4th day of April, A. D. 1902, I served the summons and complaint hereto attached upon the within named James J. Hill, as President of the Northern Securities Company personally, by handing to and leaving with James J. Hill a true and correct copy thereof.

168 PHILIP C. JUSTUS,
Sheriff of Ramsey County, Minn.
By Chas. Reichow, Deputy.

Dated this 4th day of April, 1902.

Sheriff's fee, service.....$ .50
Travel .....

$ .50

169

STATE OF MINNESOTA,

ss.

County of Ramsey.

I hereby certify and return, that at the City of St. Paul, County and State aforesaid, on the 4th day of April, A. D. 1902, I served the summons and complaint hereto attached upon the within named James J. Hill personally, by handing to and leaving with him a true and correct copy thereof.

Dated this 4th day of April, 1902. 170

PHILIP C. JUSTUS,
Sheriff of Ramsey County, Minn.
By Chas. Reichow, Deputy.

Sheriff's fee, service.....$ .50
Travel ..... .40

$ .90

STATE OF MINNESOTA, DISTRICT COURT,

171

County of Ramsey. Second Judicial District.

THE STATE OF MINNESOTA,
Plaintiff.

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually, 172
Defendants.

Your Petitioner, W. B. Douglas, as Attorney General of the State of Minnesota, for and on behalf of said State, respectfully shows to the Court that the State of Minnesota has begun suit against the Northern Securities Company, a

173 corporation of the State of New Jersey; the Great Northern Railway Company, a corporation of the State of Minnesota, and the Northern Pacific Railway Company, a corporation of the State of Wisconsin, and James J. Hill, as President of the Northern Securities Company, and individually; that the object of said suit is to enjoin said defendants from violating certain of the statutes of this State prohibiting the consolidation of parallel and competing lines of railway; that among other things, it is charged in said bill of complaint that said Northern Securities Company was organized for the purpose
174 of consolidating the capital stock, property and franchises of said Great Northern Railway Company and said Northern Pacific Railway Company in violation of the statutes of this State, and has actually acquired a very large majority of the capital stock of both said Great Northern and Northern Pacific Railway Companies, and is now dictating the policy and management of the said Railway Companies, and their property and franchises.

For further particulars regarding the allegations in relation thereto your petitioner respectfully refers to the bill of complaint now on file in this Court in said action.

175 That your petitioner has a summons duly issued and placed in the hands of the Sheriff of Ramsey County, who thereafter duly served the same upon James J. Hill as president of said Northern Securities Company; that thereafter said Northern Securities Company, acting through said James J. Hill as its president, served certain moving papers upon your petition as Attorney General of said state, wherein said Northern Securities Company asks to have the service made upon its president vacated and set aside upon the grounds that this Court has no jurisdiction over said Northern Securities Company for the reason that said Northern Securities Company
176 is not a corporation of this State and is not doing business in this State, and owns no property within this State; that in order to meet said motion and moving papers and to oppose the granting of said motion it is necessary that your petitioner, as Attorney General of the State of Minnesota, should secure certain testimony from the officers, agents or representatives of said Great Northern and Northern Pacific Railway Companies,

respectively, showing or tending to show that said Northern 177
Securities Company is the owner of a large amount of property in this State, consisting of the capital stock of said corporation, respectively, and also interested in the franchises and property of said corporations, and that said Northern Securities Company and J. J. Hill, president thereof, are actually transacting business in this State and were engaged in transacting the same prior to the bringing of said suit; and that said Northern Securities Company is dictating the management and control of said Railway Companies and properties within the State of Minnesota, that said parties are hostile to the interests of the complainant, and your petitioner 178
is unable to obtain affidavits from the officers of said Railway Companies showing these facts, although your petitioner believes the same to be true, and therefore asks that this Court make an order permitting your petitioner to take such testimony orally before this Court, said testimony when so taken to be used in opposition to said motion the same as though presented in the form of affidavits.

Dated St. Paul, April 16th, 1902.

W. B. DOUGLAS,
Petitioner. 179

STATE OF MINNESOTA,
ss.
County of Ramsey.

W. B. Douglas, being by me first duly sworn, on his oath deposes and says:

That he is the Attorney General of the State of Minnesota, and the petitioner named in the foregoing petition; that he has read said petition and knows the contents thereof, and 180
that the same is true of his own knowledge.

W. B. DOUGLAS.

Subscribed and sworn to before me this 16th day of April, A. D. 1902.

(Notarial Seal.) M. D. MUNN, Notary Public,
Ramsey County, Minnesota.

181

STATE OF MINNESOTA, DISTRICT COURT,

County of Ramsey. Second Judicial District.

THE STATE OF MINNESOTA,

Plaintiff.

182

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually,

Defendants.

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183 It is hereby ordered that the State of Minnesota, through its Attorney General, W. B. Douglas, be and it hereby is authorized to present oral testimony in opposition to the motion to be made in the above entitled action to set aside the service of the summons upon said Northern Securities Company, which said testimony shall be offered at the special term of this Court to be held at the court house in the City of St. Paul, on the 19th day of April, 1902, or at such other time as said hearing may be adjourned to. Defendants, or either of them may in like manner present oral testimony.

Dated this 17th day of April, 1902.

184 CHAS. E. OTIS,
District Judge.

(Endorsed.) Filed April 17, 1902.
Edward G. Rogers, Clerk.
By G. A. Limberg, Deputy.

185

STATE OF MINNESOTA, DISTRICT COURT,

County of Ramsey. Second Judicial District.

THE STATE OF MINNESOTA,

Plaintiff.

vs.

186 NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually,

Defendants.

PETITION FOR REMOVAL TO THE UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA.

To the Honorable the District Court: 187

Your petitioners, the above named Northern Securities Company, Great Northern Railway Company, Northern Pacific Railway Company, and James J. Hill, as President of the Northern Securities Company, and Individually (the said Northern Securities Company and said James J. Hill, in his capacity as president thereof, each appearing specially for the sole purpose of this petition for removal), respectfully show:

That the above entitled action is a suit of a civil nature in equity and was begun on the 4th day of April, 1902, and is still pending in this Court, and the time for answering the com- 188 plaint therein has not yet expired.

That the matter in dispute in said action exceeds, exclusive of interest and costs, the sum or value of two thousand dollars.

That this action arises under the constitution and laws of the United States and more especially under the eighth section of the first article of the constitution and the fourteenth

189 amendment thereto, and the Act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and that the title and right on which the said action depends and is based, and on which a recovery by plaintiff depends, will be defeated by one construction of the Constitution or said law, and sustained by an opposite construction, in this:

That said complaint alleges a combination among the defendants for the purpose of monopolizing, and which, as is alleged, does monopolize commerce among the states of the
190 Union, as well as within the State of Minnesota, and sets forth the provisions of a statute of said State which forbids every contract or combination in restraint of trade or commerce between any of the people of said State and any of the people of any other state or country, and which prohibits and declares unlawful any union or combination to which a corporation of said State is a party, the purposes or effect of which is to control or monopolize in any manner, the trade or commerce, or any part thereof, of the several states.

And the complaint among the states have been effected by the defendants in violation of said State statute, and also in
191 violation of said Act of Congress of July 2, 1890.

And the complaint prays that it be adjudged that the said combination and agreement and all acts done and to be done thereunder are in violation of said State statute and said Act of Congress, and that plaintiff may thereupon, and because of such adjudged violation, have the relief specially prayed and also general relief.

And for a more particular statement of the foregoing and other matters in said complaint, your petitioner refers to said complaint.

And your petitioners herewith offer a bond with good and
192 sufficient surety for their entering, in the Circuit Court of the United States for the District of Minnesota on the first day of its next session, a copy of the record in such action and for paying all costs that may be awarded by the said Circuit Court if said Court shall hold that such action was wrongfully or improperly removed thereto.

And your petitioners pray this honorable Court to proceed no further in this action except to accept this petition and

said bond and surety as required by law, and to make an order 193
for such removal and to cause the record herein to be removed into said Circuit Court.

Dated April 18th, 1902.

NORTHERN PACIFIC RAILWAY COMPANY,
By C. W. Bunn, General Counsel.
GREAT NORTHERN RAILWAY COMPANY,
By M. D. Grover, Attorney.
JAMES J. HILL,
By Young & Lightner, His Attorneys.
NORTHERN SECURITIES CO. and JAMES J. HILL, 194
as President of the Northern Securities Co.,
By Young & Lightner, Their Attorneys, Appearing Specially as Stated in the Petition.

(Endorsed.) Filed April 18, 1902.
Edward G. Rogers, Clerk.
By G. A. Limberg, Deputy.

STATE OF MINNESOTA, DISTRICT COURT,
County of Ramsey. Second Judicial District. 195

THE STATE OF MINNESOTA,
Plaintiff.

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually, 196
Defendants.

Know All Men by These Presents, That we, the above named defendants, the Northern Securities Company, the Great Northern Railway Company, the Northern Pacific Rail-

197 way Company, and James J. Hill, as president of said Northern Securities Company, and also individually, as principals, and H. A. Gray and Edward Sawyer as sureties, are held and firmly bound unto the State of Minnesota in the sum of five hundred dollars, to be paid to said State or its assigns, for which payment well and truly to be paid we bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas the above bounden defendants have presented to the above named
198 District Court their petition for the removal of the above entitled action now pending therein to the Circuit Court of the United States for the District of Minnesota, Third Division: Now, if said petitioners shall enter in said Circuit Court on the first day of its next session a copy of the record in such action and shall pay all costs that may be awarded by said Circuit Court if said Court shall hold that said action was wrongfully or improperly removed thereto, then this obligation to be void, otherwise to remain in full force.

Dated this 18th day of April, 1902.

NORTHERN PACIFIC RAILWAY COMPANY.

199 By C. W. Bunn, General Counsel.

Attest: R. H. Relf, Assistant Secretary.

Executed in presence of

_____ _____.

(N. P. Ry. Co. Seal.)

GREAT NORTHERN RAILWAY COMPANY.

By E. Sawyer, Assistant Secretary.

JAS. J. HILL.

By W. C. Toomey. (Seal.)

Geo. P. Metcalf.

Edward B. Young.

200 (Grt. N. Ry. Co.'s Seal.)

NORTHERN SECURITIES COMPANY. (Seal.)

JAMES J. HILL, as President of the Northern Securities Co. (Seal.)

By Geo. B. Young.

Edw. Sawyer, (Seal.

H. A. Gray, (Seal.)

201

STATE OF MINNESOTA,

ss.

County of Ramsey.

On this 12th day of April, 1902, before me appeared Edward Sawyer, to me personally known, who, being by me duly sworn, did say that he is assistant secretary of the Great Northern Railway Company, a corporation, and that the seal affixed to the foregoing and annexed instrument is the corporate seal of said corporation, and that said instrument was 202
signed and sealed in behalf of said corporation by authority of its board of directors, and said Edward Sawyer acknowledged said instrument to be the free act and deed of said corporation.

(Notarial Seal.) EDWARD B. YOUNG,
Notary Public, Ramsey County, Minn.

STATE OF MINNESOTA,

ss.

County of Ramsey.

On this 18th day of April, 1902, before me appeared C. W. 203
Bunn, to me personally known, who, being by me duly sworn, did say that he is general counsel of the Northern Pacific Railway Company, a corporation, and that the seal affixed to the foregoing and annexed instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said C. W. Bunn acknowledged said instrument to be the free act and deed of said corporation.

(Notarial Seal.) EDWARD B. YOUNG,
Notary Public, Ramsey County, Minn 204

STATE OF MINNESOTA,

ss.

County of Ramsey.

On the 18th day of April, 1902, before me personally appeared William C. Toomey, to me known to be the person who executed the foregoing instrument in behalf of James J.

Hill, individually, and also personally appeared George B. Young, to me known to be the same person who executed the foregoing instrument on behalf of the Northern Securities Company, and James J. Hill, as president thereof, and also H. A. Gray and Edward Sawyer, to me known to be the persons who as securities executed the foregoing instrument; and the said William C. Toomey acknowledged that he executed the same as the free act and deed of said James J. Hill, and the said George B. Young acknowledged that he executed the same as the free act and deed of said corporation and of said James J. Hill, as president thereof; and the said H. A. Gray and Edward Sawyer each acknowledged that he executed the same as his free act and deed.

(Notarial Seal.) EDWARD B. YOUNG,
Notary Public, Ramsey County, Minn.

STATE OF MINNESOTA,
ss.
County of Ramsey.

Edward Sawyer and H. A. Gray, being severally duly sworn, each for himself, deposes and says that he is one of the sureties named in and who executed the foregoing bond and that he is a resident and freeholder in the State of Minnesota, and is worth the sum of one thousand dollars over and above all his debts and liabilities, and exclusive of property exempt from execution.

EDW. SAWYER,
H. A. GRAY.

Subscribed and sworn to this 18th day of April, 1902, before me.

(Notarial Seal.) EDWARD B. YOUNG,
Notary Public, Ramsey County, Minn.

Endorsed:

I approve the within bond and the sufficiency of the sureties therein. April 18, 1902.

CHAS. E. OTIS,
Judge of District Court.

Filed April 18, 1902.
Edward G. Rogers, Clerk.
By G. A. Limberg, Deputy.

STATE OF MINNESOTA, DISTRICT COURT, 209

County of Ramsey. Second Judicial District.

THE STATE OF MINNESOTA,

Plaintiff,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually, 210

Defendants.

The defendants in the above entitled action, having this day presented to the Court their petition for removal of said action to the Circuit Court of the United States for the District of Minnesota, together with their bond with good and sufficient surety conditioned as required by the Act of Congress in such case provided, (the defendants the Northern Securities Company and James J. Hill as president thereof appearing specially for the sole purpose of said petition). 211

The Court doth accept such petition and bond, and doth order that said action be and the same is hereby removed to the said Circuit Court of the United States and that no further proceedings be had therein in this Court.

CHAS. E. OTIS, 212
Judge of District Court.

Dated April 18, 1902.

Endorsed:

Filed, Apr. 18, 1902. Edward G. Rogers, Clerk. By G. A. Limberg, Deputy.

213 STATE OF MINNESOTA,

County of Ramsey. Second Judicial District.

I, Edward G. Rogers, Clerk of the District Court, Ramsey County and State of Minnesota, do hereby certify and return to the Honorable the Circuit Court of the United States for the District of Minnesota, Third Division, that I have compared the foregoing paper writing with the original record in the action therein entitled, now remaining of record in my office, and that the same is a true and correct copy and
214 transcript of said original and the whole thereof.

Witness my hand and seal of said Court, at St. Paul, this 23rd day of April, A. D. 1902.

EDWARD G. ROGERS, Clerk.
By G. A. Johnson, Deputy.

(Seal of Ramsey County District Court.)

Endorsed:

Return to Circuit Court. Filed June 24th, 1902. Henry D. Lang, Clerk.

215a

STATE OF MINNESOTA,

Complainant,

vs.

THE NORTHERN SECURITIES CO. et al.,

Defendants.

216a

To Hon. W. B. Douglas,
Attorney for Plaintiff:

You will please take notice that at the next stated term of the above named court to be held at the United States court house in the City of St. Paul, on the 24th day of June, 1902,

at the opening of the court on that day or as soon thereafter as counsel can be heard, a motion will be made on behalf of the Northern Securities Company, appearing specially for the purpose of said motion only, that the alleged and pretended service of the summons in the above entitled suit upon said Northern Securities Company on the 4th day of April, 1902, be wholly set aside, vacated and held for naught. 217a

Said motion will be made on said summons and the complaint in said action, and the officer's return of service thereof as appearing by copy in the transcript of the record of said district court filed in this court pursuant to the petition and order for removal appearing in said transcript, and upon the affidavit of James J. Hill, a copy whereof is herewith served upon you. 218a

The grounds for such motion are—

That said company, being a foreign corporation, having no property or place of business in the State of Minnesota at the time of such pretended service, and never having done any business therein nor designated any person as its agent to receive service of summons therein, and the cause of action, if any, alleged in said complaint not having arisen in said state, was not at the time of said pretended service and never has been subject to the jurisdiction of said state or of its courts; and said attempted service of said summons upon said company by delivering a copy thereof with a copy of the complaint in said action to its president was not and is not authorized by any law of said state, and was not and is not due process of law, and was and is in violation of the rights secured to said company by the 14th amendment of the Constitution of the United States. 219a

Dated St. Paul, June 16, 1902.

YOUNG & LIGHTNER,

Attorneys appearing specially, and for the purpose of this motion only, for the Northern Securities Company. 220a

221*a*

IN THE CIRCUIT COURT OF THE UNITED STATES.
For the District of Minnesota.
Third Division.

THE STATE OF MINNESOTA,

Plaintiff,

vs.

222*a*

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually,

Defendants.

STATE OF NEW YORK,

223*a* City and County of New York.

JAMES J. HILL, being duly sworn, makes oath and says: I am one of the defendants in the above entitled suit, which was begun in the District Court for Ramsey County, Minnesota, and has been thence removed to this court. I am also President of the Northern Securities Company, which is named as a defendant therein, and have been such President ever since the organization of said company.

On the 4th day of April, 1902, and before the removal of said suit to this court, at the City of St. Paul, in said county, I
224*a* was served, as an individual defendant, with the summons and complaint in said suit. At the same time two additional copies of said summons and complaint were delivered to me by the Sheriff of said Ramsey County, with the intention and purpose, as I am informed and believe, of effecting by such delivery a service of said summons and complaint on said Northern Securities Company, and also upon myself, as President of that company.

No other service of the summons in this suit, than as above stated, upon said Northern Securities Company, or upon myself as President thereof has been made or attempted to be made, to the best of my knowledge, information and belief. 225a

The Northern Securities Company was incorporated on November 13, 1901, in the State of New Jersey, under the laws thereof, and was organized by choice of directors and officers on the next following day. A true copy of its certificate and articles of incorporation is set forth in folios six to twenty-one, both inclusive, of the complaint in said suit, to which copy I refer and make the same a part of this affidavit.

I was a principal promoter of the Northern Securities Company, and have been its President from its organization to the present time. I know the purposes for which it was formed, the business it has done, and where and by what officers or agents of the company such business has been done, the property it has acquired, and where the same was acquired, and has been and is held. 226a

Said company was formed for the purposes and those only, and to carry on the business and that only, and with the powers and those only, set forth in said certificate. It was not formed to carry on the business of owning or operating or managing railroads or any railroad, nor has it power or any purpose of owning, operating or managing any railroad, nor has it ever done any of those things. 227a

The principal office of said Northern Securities Company has always been and is in the City of Hoboken and State of New Jersey, and it has had ever since its organization, and still has, an office in the City of New York in the State of New York. It has not now and has never had any other office or place of business than the said two offices, and has never transacted any business, except at said two offices. None of the acts or matters alleged in said complaint as a cause of action against it were done, or took place in the State of Minnesota, nor did the cause of action, if any, alleged against said company in said complaint, arise in the State of Minnesota. 228a

Said company does not own, have or possess, nor has it ever owned, had or possessed any property in the State of Minnesota, nor has it ever made any contract or conducted, or done any business of any nature, whatever, or done any act what-

229a ever, within said state. It has never had within said state any place of business, office or officer, agency of agent, whatever.

I reside in said City of St. Paul, where I have continuously resided for more than forty years. But I do not reside nor have I ever resided there as President of said Northern Securities Company, or because of such presidency, or because of any relation that I sustain, or have ever sustained to said company, nor for the purpose, or with the intention of exercising within the State of Minnesota any of the functions of said office, or performig any of its duties, or making any con-
230a tracts, or doing any business or any acts in any capacity for said company, or acquiring, having, holding or disposing of any property of, or for said company. And I have never, within said State of Minnesota, exercised any of the powers or functions, or performed any of the duties of said office, nor have I made any contracts or done any business of any acts whatever, or acquired, held or disposed of any property for said company, or acted or assumed to act as its officer or director, or agent, or representative in any capacity in said state. Nor have I ever been appointed or designated by said company
231a as a person upon whom summons or process can be served in Minnesota, or ever authorized by said company to accept service of summons or process in that state.

Said Northern Securities Company has never become a corporation of the State of Minnesota, whether in the modes or any of them provided by the statutes of said state, or otherwise; nor has it ever done any of the things required by the Statutes of Minnesota, to be done by it, before it can have or own property, or do business in said state, nor has it ever submitted itself to the jurisdiction of said state. It is and always has been a corporation of New Jersey alone, and a cor-
232a poration wholly and in every respect foreign to the State of Minnesota.

JAS. J. HILL.

Subscribed and sworn to this 23d day of April, A. D. 1902, before me.

(Notarial Seal.)

GEO. H. COREY,
Notary Public,
City and County and State of New York.

STATE OF NEW YORK, 233a

ss.

County of New York.

I, THOMAS L. HAMILTON, Clerk of the County of New York, and also Clerk of the Supreme Court for the said county, the same being a Court of Record, do hereby certify, that GEORGE H. COREY, whose name is subscribed to the certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for the County of New York, dwelling in the said county, commissioned and sworn, and duly authorized to take the same. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine. 234a

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 23rd day of April, 1902.

THOS. L. HAMILTON, Clerk.

Filed, June 24th, 1903. Henry D. Lang, Clerk.

235a

STATE OF MINNESOTA, DISTRICT COURT,

County of Ramsey. Second Judicial District.

THE STATE OF MINNESOTA,

Plaintiff,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually, 236a

Defendants.

Hon. W. B. Douglas,

Attorney for Plaintiff.

You are hereby notified that the motion on the part of the Northern Securities Company to set aside the pretended serv-

237a ice of summons upon it, and the motion of James J. Hill, as President of said Company, to set aside the pretended service of summons upon him as such President, notice of each of which motions was served upon you, on April 11, 1902, are and each of them is hereby withdrawn, and the notice of each of said motions, served upon you as aforesaid, is hereby countermanded.

Dated April 18, 1902.

YOUNG & LIGHTNER,

Attorneys appearing specially for the Northern Securities Co., and James J. Hill, as

238a President thereof, for the purposes of said motions only.

24 Gilfillan Block, St. Paul, Minn.

UNITED STATES CIRCUIT COURT.

215

District of Minnesota.

Third Division.

STATE OF MINNESOTA,

vs.

216 NORTHERN SECURITIES COMPANY and Others.

Henry D. Lang, Esq., Clerk of said Court:

You will please enter the appearance of the defendants, the Northern Securities Company, James J. Hill, as President of said company, and James J. Hill individually, by the under-

signed as their solicitors, pursuant to stipulation filed in this cause. 217

Dated August 4, 1902.

Yours respectfully,

YOUNG & LIGHTNER,

Solicitors for the above named Defendants.

Endorsed:

Praecipe for appearance of Northern Securities Co., James J. Hill as President, and James J. Hill.

Entd. C. R. "B" pg. 87. Filed Aug. 4th, 1902. Henry D. Lang, Clerk. By Louise B. Trott, Deputy. 218

UNITED STATES CIRCUIT COURT.
District of Minnesota.
Chancery Rule Register.

219

STATE OF MINNESOTA.

1902, Aug. 4th. vs.
C. Eq. No. 791.

NORTHERN SECURITIES COMPANY and Others.

And now come the defendants, Northern Securities Company and James J. Hill, as President of the Northern Securities Company and individually, by Young & Lightner, Solicitors, on whose motion it is ordered that the appearance of said defendants be, and the same is hereby, entered. 220

"C. R. 'B,' p. 87."

221 CIRCUIT COURT OF THE UNITED STATES.
District of Minnesota.
Third Division.

STATE OF MINNESOTA.

vs.

NORTHERN SECURITIES COMPANY et al.,
Defendants.

222 APPEARANCE.

The Clerk will enter my appearance for the defendant the Great Northern Railway Company.

M. D. GROVER.

UNITED STATES CIRCUIT COURT.
District of Minnesota.

Appearance of M. D. Grover for defendant Great Northern Ry. Co.

223 Entd. C. R. "B," p. 87.
Filed August 9th, 1902. Henry D. Lang, Clerk.

UNITED STATES CIRCUIT COURT.
District of Minnesota.
Chancery Rule Register.

STATE OF MINNESOTA.

1902, Aug. 4th. vs.
C. Eq. No. 791.

224 NORTHERN SECURITIES COMPANY et al.

And now comes the defendant Great Northern Railway Company by M. D. Grover, Solicitor, on whose motion it is ordered that the appearance of said defendant be, and the same is hereby, entered.

"C. R. 'B,' p. 87."

UNITED STATES CIRCUIT COURT.
District of Minnesota.
Third Division.

226

THE STATE OF MINNESOTA,

Plaintiff,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually.

Defendants. 227

To the Clerk of the Circuit Court of the United States for the District of Minnesota:

Please enter my appearance in the above entitled suit for the defendant Northern Pacific Railway Company.

Dated August 11, 1902.

C. W. BUNN.

Endorsed:

228

Appearance of C. W. Bunn for defendant Northern Pacific Railway Company.

Ent'd. C. R. "B," page 88.

Filed August 12th, 1902. Henry D. Lang, Clerk.

229 UNITED STATES CIRCUIT COURT.
District of Minnesota.
Chancery Rule Register.

STATE OF MINNESOTA.

1902, Aug. 12. vs.
C. Eq. No. 791.

NORTHERN SECURITIES CO. et al.

230 And now comes the defendant Northern Pacific Railway Company by C. W. Bunn, Solicitor, on whose motion it is ordered that the appearance of said defendant be, and the same is hereby, entered.

"C. R. 'B,' p. 88."
Entered 791, C. Eq.
Filed Sept. 10, 1902. Henry D. Lang, Clerk.

YOUNG & LIGHTNER,
Solicitors.

231 IN THE CIRCUIT COURT OF THE UNITED STATES,
For the District of Minnesota,
Third Division.

THE STATE OF MINNESOTA,
Plaintiff,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY and JAMES J. HILL, as President of the Northern Securities Company, and Individually.
232
Defendants.

The Joint and Several Answer of the Defendants the Northern Securities Company and James J. Hill, as President Thereof, and Individually, to the Bill of Complaint of the State of Minnesota.

These defendants, reserving to themselves all right of exception to the said bill of complaint, for answer thereto, say: 233

I.

They admit the matters stated in subdivisions I, II and III of said bill, except that they deny that the Northern Securities Company has ever conducted any business in the State of Minnesota, or has ever had any place of business or owned any property in said state; and they deny that the railways or property of the Eastern Railway Company of Minnesota are operated otherwise than under and by virtue of a lease 234 thereof to the Great Northern Railway Company (which company will be hereinafter styled the "Great Northern Company") and deny that the defendant James J. Hill was on November 13, 1901, or that he has ever been, the owner of or in possession or control of, or had, on said day, or at any time, subject to his direction, or disposition, more than a majority, or more than a portion far less than a majority of the capital stock of said Great Northern Company; they deny that the Northern Pacific Railway Company (which company will be hereinafter styled the "Northern Pacific Company"), ever became a corporation of or within the state of 235 Minnesota, or that it ever became subject to the laws thereof, except in so far as it became subject to said laws by filing a copy of its articles with the secretary of the state of Minnesota and by complying with the statutes of Minnesota relating to the admission into the state of railway companies organized under the laws of other states; and deny that the said Northern Pacific Company's lines have, since the organization of the Securities Company, been operated subject to the dictation or control of the officers of that company; and deny that the board of directors of the Northern Pacific Com- 236 pany, when the bill was filed, or at any time since, have been the persons stated in said bill; on the contrary, the board of directors of said company was, when the bill was filed, and ever since has been, composed as follows: George F. Baker, Edward H. Harriman, William P. Clough, Brayton Ives, D. Willis James, John S. Kennedy, Daniel S. Lamont, William Rockefeller, Charles Steele, Samuel Spencer, James Stillman,

237 Eben B. Thomas, Hamilton McK. Twombly, all of New York City; Charles S. Mellen, St. Paul; and Samuel Rea, of Philadelphia, Pennsylvania.

II.

They admit that the cities and towns in the State of Minnesota named in subdivision IV of said bill are points on the lines of each of the two defendant railway companies, but deny that the lines of said two railway companies between
238 said points were or are parallel, or that said lines competed for freight or passenger traffic between said points in any different manner or to any greater extent prior to the formation of the Northern Securities Company than they have at all times done since the formation of that company and will continue to do in the future.

They deny that the lines of said defendant companies between the State of Minnesota and Puget Sound were or are parallel to each other, or that they have ever been competing lines except at a few points, at nearly all of which points
239 they competed and still compete with the lines of other railway companies; and they deny that said defendant railway companies have at any time competed with each other for passenger or freight traffic in any other or different manner or to any greater extent than they have continuously done since the formation of the Northern Securities Company, and will continue to do in the future.

They admit that the lines of said defendant railway companies are the only lines of any single railway company traversing east and west all the northern tier of states of the United States west of the Mississippi river. But they deny
240 that said lines are the only lines crossing the State of Minnesota and connecting the Pacific ocean by rail with points in said state; or that they are the only lines connecting the territory of said northern tier of states or the territory tributary thereto by rail with the Pacific ocean. And they deny each and every statement in said subdivision IV of said bill contained not hereinbefore expressly admitted.

III.

They admit that large quantities of swamp lands were granted by the United States to the State of Minnesota by the acts of Congress mentioned in subdivision V of said bill, for the purposes in said acts set forth. But they and each of them know not, and have not been informed save by said bill, and cannot set forth as to their belief or otherwise, as to what quantity, if any, of said lands are now owned by said state, nor as to the value, if any, of such lands or any of them; nor to what extent, if at all, the value or salability 242 of said lands, or any of them, depends upon competition of any kind between the said defendant railway companies, or upon the construction of railway lines by both or either of said defendant railway companies.

They admit that each of said companies has heretofore, and as the circumstances of each case warranted, from time to time built spur or branch lines into territory adjacent to its railway as well as into new territory; but they deny that such construction has been by reason of rivalry between said companies, or that the construction of such spur or branch 243 lines has been or will be prevented, or lessened, or deferred, or in any way affected by the formation of the Northern Securities Company. And they deny that the matters, or any of them, alleged in said bill have prevented or hindered, or will in the future prevent or hinder, the construction by the plaintiff, or by any person or corporation thereto authorized by plaintiff of any line or lines of railroad that the plaintiff may deem necessary or advantageous to bring its swamp lands into market and secure their settlement and occupation.

And they deny each and every allegation in said subdivision V of said bill not herein expressly admitted. 244

IV.

They admit the plaintiff's ownership, maintenance and operation of the institutions named in subdivision VI of said bill, and that a small portion and no more of the supplies for some of said institutions requires to be and is in fact car-

245 ried over the line of one or the other of the defendant railway companies. As to the other matters stated in said subdivision VI these defendants and each of them, know not, and have not been informed save by said bill and cannot set forth as to their belief or otherwise in respect of said matters or any of them.

V.

They say that except the grants of swamp lands men-
246 tioned in subdivisions VII and VIII of said bill, the grants by plaintiff in aid of railways in Minnesota mentioned in said subdivisions were made by the territory and state of Minnesota merely in execution of trusts reposed in them respectively by acts of Congress granting lands of the United States to aid in the construction of such railways. None of said lands were ever the property of said territory or state, each of whom was a mere conduit to transfer the title to such lands from the United States to the respective corporations by which such railways were built; and said grants, whether congressional, territorial or state, were solely in
247 consideration of the construction, and not of the maintenance of such railways, and none of said grants were made to either of the defendant railway companies. None of such grants nor either of said swamp land grants was a gift to the company receiving the same, but each and every of them was made upon a valuable and full consideration furnished by the company receiving the same. The St. Paul, Minneapolis & Manitoba Railway Company, lessor of the Great Northern Company, purchased and paid full value for all the lands acquired by it from its predecessors under grants made to them. The Northern Pacific Company purchased and paid full value
248 to its predecessors for all the lands in Minnesota referred to in the bill as belonging to it, and neither the Northern Pacific Company nor its predecessor the Northern Pacific Railroad Company, nor the Great Northern Company, ever received any grant of lands from said territory or state except the grants of swamp lands mentioned in said subdivisions VII and VIII, which grants of swamp lands were made in consideration of the construction only, and not of the main-

tenance, of the lines in aid of which they were respectively made, and said consideration was long since fully performed. 249

As to the total amount of grants from the public domain of the United States to aid in building railroads in Minnesota, these defendants, and each of them, know not and have not been informed save by said bill and cannot set forth as to their belief or otherwise. But they say that besides the grant made by Congress directly to the Northern Pacific Railroad Company in that company's charter, grants were made by Congress, through the medium of the territory and state of Minnesota, for many other lines of railroad than those operated by either of the defendant railroad companies, and to an amount far in excess of the grants for said lines of said companies. 250

VI.

They admit the making of large shipments of wheat and other products and of merchandise from and to the places mentioned in subdivision IX of said bill. They deny that competition between the defendant railway companies for traffic between said places or any of them, was, prior to the organization of the Northern Securities Company, any sharper, or more active, or more productive of lower rates for freight or passengers than it has been at all times since such organization and still is; and deny that such rates have been at any time since the organization of the Northern Securities Company, or now are, or will be in the future any higher than if said company had not been formed. On the contrary they say that, since the formation of said company, such rates have already been largely reduced, and are now and will continue to be lower than those stated in the bill to have been secured by the sharp and active competition therein alleged. 251 252

VII.

They deny that the settled and public policy of the State of Minnesota has been to prohibit in any way the consolidation of competing or parallel lines of railway, and say that until the year 1874, which was long after the land grants men-

253 tioned in the bill and after the construction of a large portion of the railways of both said Great Northern and Northern Pacific companies, there was no law in Minnesota on the subject; and deny that there is or ever has been any policy or law in said state except such policy as is expressed in the statutes pleaded in paragraph X of the bill, and these statutes the defendants say are in violation of the constitution of the United States; and they further say that such statutes, if otherwise of any validity, have no application to the acts complained of by the plaintiff in its said bill, and are moreover
254 controlled and made of no effect by other legislation of the State of Minnesota and of the United States.

VIII.

They deny each and every allegation of subdivision XI of said bill.

IX.

They admit the fact and the date of the organization of the Northern Securities Company, and say that it was organized
255 for the purposes set forth in its articles of incorporation and for no other purpose whatever.

They admit the fact and the date of the retirement of the preferred stock of the Northern Pacific Railway Company, pursuant to a resolution of its board of directors in conformity with the articles of incorporation of said company and the agreement under which said preferred stock was originally created and issued, and that such retirement was effected, in accordance with said articles and agreement, by paying off said stock at par; and that the funds for such payment were procured by the issue and sale of $75,000,000 of
256 bonds of said Company, convertible, and which have been converted, into an equal amount of the common stock of said company; and that a preferential right to purchase said bonds was given to the common stockholders of said company in proportion to their holdings of such common stock.

They admit that after the formation of the Northern Securities Company and on November 22, 1901, that company did offer to the shareholders of the Great Northern Company

to purchase such of their shares as should be offered within sixty days from that date at $180 per share and pay therefor 257
in shares of its own capital stock at par. Except as aforesaid they say that the Securities Company has not offered or sought to purchase any stock of either of said railway companies in exchange for its own shares. They say that the Securities Company has also purchased for cash a large amount of the shares of the defendant railway companies and of other companies. Except as herein admitted they deny each and every allegation in subdivision XII of said bill.

X. 258

They deny that any of the acts alleged in subdivision XIII of said bill were done in furtherance of the agreement therein referred to or in furtherance of any of the agreements alleged in said bill.

XI.

They deny that the defendant James J. Hill was at any time the principal or controlling stockholder of the Great Northern Company, and say that while said James J. Hill was for a short time nominally a director of the Northern 259
Pacific Company, he never cast any vote as such.

XII.

They deny each and every allegation of subdivision XV of said bill.

XIII.

They admit the offer of the Northern Securities Company already stated in subdivision IX of this answer, and except as so admitted they deny each and every allegation of subdi- 260
vision XVI of said bill.

XIV.

They deny each and every allegation in subdivisions XVII, XVIII and XIX of said bill.

261

XV.

They deny each and every allegation of said bill not hereinbefore expressly admitted.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this that if there is any other matter, cause or thing in said bill contained material or necessary for these defendants to make answer unto and not herein or
262 hereby well and sufficiently answered, confessed and avoided, traversed or denied, the same is not true to the knowledge or belief of these defendants or any of them; all of which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

NORTHERN SECURITIES COMPANY,

(Seal Northern Sec. Co.) By Jas. J. Hill, President.

JAS. J. HILL,

263 As President, Northern Securities Company.

JAS. J. HILL.

YOUNG & LIGHTNER,

Solicitors.

Of Counsel.

STATE OF NEW YORK,

264 ss.

City and County of New York.

Jas. J. Hill being duly sworn says that he is president of the Northern Securities Company and verifies this answer both on behalf of that company and for himself as President thereof, and individually; that what is contained in said answer so far as concerns his own acts is true to his own knowl-

edge, and what relates to the act and deed of any other person or persons he believes to be true. 265

JAS. J. HILL.

Subscribed and sworn to before me the 8th day of September, 1902.

MARY AGNES CARTWRIGHT,
Notary Public, Kings County.

(Notarial Seal.)

Cert. filed in N. Y. Co.
Entered 791, C. Eq
Filed Sept. 1, 1902. Henry D. Lang, Clerk.

C. W. BUNN,
Solicitor. 266

C. W. Bunn and
Francis Lynde Stetson,
Of Counsel.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the District of Minnesota,
Third Division.

267

THE STATE OF MINNESOTA,
Plaintiff,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY and JAMES J. HILL, as President of the Northern Securities Company, and Individually,
Defendants. 268

The Answer of the Defendant Northern Pacific Railway Company to the Bill of Complaint of the State of Minnesota:

This defendant, reserving to itself all right of exception to the said bill of complaint, for answer thereto says:

269

I.

It admits the matters stated in subdivisions I, II and III of said bill, except that it does not know and has not been informed save by said bill and cannot set forth as to its belief or otherwise whether the Northern Securities Company has ever conducted any business in the State of Minnesota, or has ever had any place of business or owned any property in said State, or how the railways or property of the East-
270 ern Railway Company of Minnesota are operated or controlled by the Great Northern Company, or as to whether the defendant James J. Hill was on November 13, 1901, or at any other time, the owner of or in possession or control of, or had on said day or at any time subject to his direction or disposition more than a majority or any other amount of the capital stock of said Great Northern Company; it denies that it, this defendant, ever became a corporation of or within the State of Minnesota, or that it ever became subject to the laws thereof, except in so far as it became subject to said laws by filing a copy of its articles with the Secretary
271 of the State of Minnesota and by complying with the statutes of Minnesota relating to the admission into the state of railway companies organized under the laws of other states; and denies that its lines have, since the organization of the Securities Company, been operated subject to the dictation or control of the officers of that company; and denies that its board of directors when the bill was filed or at any time since have been the persons stated in said bill; on the contrary the board of directors of said company was, when the said bill was filed, and ever since has been, composed as follows: George F. Baker, Edward H. Harriman, William P. Clough,
272 Brayton Ives, D. Willis James, John S. Kennedy, Daniel S. Lamont, William Rockefeller, Charles Steele, Samuel Spencer, James Stillman, Eben B. Thomas, Hamilton McK. Twombly, all of New York City, Charles S. Mellen of St. Paul, and Samuel Rea of Philadelphia.

II.

It admits that the cities and towns in the State of Minnesota named in subdivision IV of said bill are points on the lines of each of the two defendant railway companies, but denies that the lines of said two railway companies between said points were or are parallel, or that said lines competed for freight or passenger traffic between said points in any different manner or to any greater extent prior to the formation of the Northern Securities Company than they have at all times done since the formation of that company and 274
will continue to do in the future.

It denies that the lines of said defendant railway companies between the State of Minnesota and Puget Sound were or are parallel to each other, or that they have ever been competing lines except at a few points, at nearly all of which points they competed and still compete with the lines of other railway companies; and it denies that said defendant railway companies have at any time competed with each other for passenger or freight traffic in any other or different manner or to any greater extent than they have continuously done since the formation of the Northern Securities Company, and 275
will continue to do in the future.

It admits that the lines of said defendant railway companies are the only lines of any single railway company traversing east and west all the northern tier of states of the United States west of the Mississippi river. But it denies that said lines are the only lines crossing the State of Minnesota and connecting the Pacific ocean by rail with points in said state; or that they are the only lines connecting the territory of said northern tier of states or the territory tributary thereto by rail with the Pacific ocean. And it denies each and every statement in said subdivision IV of said bill contained not 276
hereinbefore expressly admitted.

III.

It admits that large quantities of swamp lands were granted by the United States to the State of Minnesota by

277 the acts of Congress mentioned in subdivision V of said bill, for the purposes in said acts set forth. But it knows not, and has not been informed save by said bill, and cannot set forth as to its belief or otherwise, as to what quantity, if any, of said lands, are now owned by said state, nor as to the value, if any, of such lands or any of them; nor to what extent, if at all, the value or salability of said lands, or any of them, depends upon competition of any kind between the said defendant railway companies, or upon the construction of railway lines by both or either of said defendant railway
278 companies.

It admits that each of said companies has heretofore, and as the circumstances of each case warranted, from time to time built spur or branch lines into territory adjacent to its railway as well as into new territory; but it denies that such construction has been by reason of rivalry between said companies, or that the construction of such spur or branch lines has been or will be prevented, or lessened, or deferred, or in any way affected by the formation of the Northern Securities Company. And it denies that the matters, or any of them, alleged in said bill have prevented or hindered, or will
279 in the future prevent or hinder, the construction by the plaintiff, or by any person or corporation thereto authorized by plaintiff of any line or lines of railroad that the plaintiff may deem necessary or advantageous to bring its swamp lands into market and secure their settlement and occupation.

And it denies each and every allegation in said subdivision V of said bill not herein expressly admitted.

IV.

It admits the plaintiff's ownership, maintenance and opera-
280 tion of the institutions named in subdivision VI of said bill, and that a small portion and no more of the supplies for some of said institutions requires to be and is in fact carried over the line of one or the other of the defendant railway companies. As to the other matters stated in said subdivision VI this defendant knows not, and has not been informed save by said bill and cannot set forth as to its belief or otherwise in respect of said matters or any of them.

V.

It says that except the grants of swamp lands mentioned in subdivisions VII and VIII of said bill, the grants by plaintiff in aid of railways in Minnesota mentioned in said subdivisions were made by the territory and state of Minnesota merely in execution of trusts reposed in them respectively by acts of Congress granting lands of the United States to aid in the construction of such railways. None of said lands were ever the property of said territory or state, each of whom was a mere conduit to transfer the title to such lands 282
from the United States to the respective corporations by which such railways were built; and said grants, whether congressional, territorial or state, were solely in consideration of the construction, and not of the maintenance of such railways, and none of said grants were made to either of the defendant railway companies. None of such grants nor either of said swamp land grants was a gift to the company receiving the same, but each and every of them was made upon a valuable and full consideration furnished by the company receiving the same. The St. Paul, Minneapolis & Manitoba 283
Railway Company, lessor of the Great Northern Company, as this defendant is informed, purchased and paid full value for all the lands acquired by it from its predecessors under grants made to them. This defendant purchased and paid full value to its predecessors for all the lands in Minnesota referred to in the bill as belonging to it, and neither this defendant nor its predecessor, the Northern Pacific Railroad Company, ever received any grant of lands from said territory or state except the grants of swamp lands mentioned in said subdivisions VII and VIII, which grants of swamp lands were made in consideration of the construction only, and not 284
of the maintenance, of the lines in aid of which they were respectively made, and said consideration was long since fully performed.

As to the total amount of grants from the public domain of the United States to aid in building railroads in Minnesota, this defendant knows not and has not been informed save by said bill and cannot set forth as to its belief or otherwise.

285 But it says that besides the grant made by Congress directly to the Northern Pacific Railroad Company in that company's charter, grants were made by Congress, through the medium of the territory and state of Minnesota, for many other lines of railroad than those operated by either of the defendant railroad companies, and to an amount far in excess of the grants for said lines of said companies.

VI.

286 It admits the making of large shipments of wheat and other products and of merchandise from and to the places named in subdivision IX of said bill. It denies that competition between the defendant railway companies for traffic between said places or any of them was, prior to the organization of the Northern Securities Company, any sharper, or more active, or more productive of lower rates for freight or passengers than it has been at all times since such organization and still is; and denies that such rates have been at any time since the organization of the Northern Securities Company, or now are, or will be in the future any higher than
287 if said company had not been formed. On the contrary it says that, since the formation of said company, such rates have already been largely reduced, and are now and will continue to be lower than those stated in the bill to have been secured by the sharp and active competition therein alleged.

VII.

It denies that the settled and public policy of the State of Minnesota has been to prohibit in any way the consolidation of competing or parallel lines of railway, and says that
288 until the year 1874, which was long after the land grants mentioned in the bill and after the construction of a large portion of the railways of both said Great Northern and Northern Pacific companies, there was no law in Minnesota on the subject; and denies that there is or ever has been any policy or law in said state except such policy as is expressed in the statutes pleaded in paragraph X of the bill, and these statutes the defendant says are in violation of the constitu-

tion of the United States; and it further says that such stat- 289
utes, if otherwise of any validity, have no application to the acts complained of by the plaintiff in its said bill, and are moreover controlled and made of no effect by other legislation of the State of Minnesota and of the United States.

VIII.

It denies each and every allegation of subdivision XI of said bill.

290

IX.

It admits the fact and the date of the organization of the Northern Securities Company, and says that it was organized to the best of this defendant's belief for the purposes set forth in its articles of incorporation and for no other purpose whatever.

It admits the fact and the date of the retirement of the preferred stock of this defendant, pursuant to a resolution of its board of directors in conformity with the articles of incorporation of said company and the agreement under which said 291
preferred stock was originally created and issued, and that such retirement was effected, in accordance with said articles and agreement, by paying off said stock at par; and that the funds for such payment were procured by the issue and sale of $75,000,000 of bonds of this company, convertible, and which have been converted, into an equal amount of its common stock; and that a preferential right to purchase said bonds was given to the common stockholders in proportion to their holdings of such common stock.

It admits that after the formation of the Northern Securities Company and on November 22, 1901, that company did 292
offer to the shareholders of the Great Northern Company to purchase such of their shares as should be offered within sixty days from that date at $180 per share and pay therefor in shares of its own capital stock at par, and that on December 5, 1901, the Securities Company did offer to the holders of common stock of this defendant to purchase such of their shares as should be offered within sixty days from that date

293 at $115 per share and pay therefor in shares of its own capital stock at par. Except as aforesaid it says that the Securities Company to the best of this defendant's knowledge and belief has not offered or sought to purchase any stock of either of said railway companies in exchange for its own shares. It says that the Securities Company has as it is informed and believes also purchased for cash a large amount of the shares of the defendant railway companies and of other companies. Except as herein admitted it denies each and every allegation in subdivision XII of said bill.

294

X.

It denies that any of the acts alleged in subdivision XIII of said bill were done in furtherance of the agreement therein referred to or in furtherance of any of the agreements alleged in said bill.

XI.

295 It cannot say whether the defendant James J. Hill was at any time the principal or controlling stockholder of the Great Northern Company, and says that while Mr. Hill was for a short time nominally a director of this defendant, he never attended the meetings of the board and took no part in its proceedings.

XII

It denies each and every allegation of subdivision XV of said bill.

296

XIII.

It admits the offer of the Northern Securities Company already stated in subdivision IX of this answer, and except as so admitted it denies each and every allegation of subdivision XVI of said bill.

XIV.

It denies each and every allegation in subdivisions XVII, XVIII and XIX of said bill.

XV.

It denies each and every allegation of said bill not hereinbefore expressly admitted.

298

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged; without this that if there is any other matter, cause or thing in said bill contained material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently answered, confessed and avoided, traversed or denied, the same is not true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained. 299

NORTHERN PACIFIC RAILWAY COMPANY,
(Corporate Seal) By C. S. Mellen, President.
C. W. Bunn, Solicitor.

C. W. Bunn and
Francis Lynde Stetson,
Of Counsel.

300

DISTRICT OF MINNESOTA, ss.

C. S. Mellen being duly sworn says that he is president of the Northern Pacific Railway Company and verifies this answer on its behalf; that what is contained in said answer so far as concerns his own acts is true to his own knowledge, and

301 what relates to the act and deed of any other person or persons he believes to be true.

C. S. MELLEN,

Subscribed and sworn to before me the 22nd day of August, 1902.

H. A. FABIAN,
(Notarial Seal) Notary Public,
Ramsey County, Minnesota.

UNITED STATES CIRCUIT COURT,
302 District of Minnesota.

STATE OF MINNESOTA,

Plaintiff,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY and NORTHERN PACIFIC RAILWAY COMPANY,

Defendants.

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303 STIPULATION.

It is hereby stipulated by and between the parties hereto, by their respective attorneys, that the answer of the defendants, in the above entitled action may be filed without verification at the time required by the rules of the Court, provided, however, that the same shall be duly verified by one of the officers of the said defendants, within ten days thereafter.

W. B. DOUGLAS,
Attorney General.
M. D. GROVER,
304 Attorney for Defendants Great Northern Ry. Co.
YOUNG & LIGHTNER,
Attys. for Nor. Sec. Co., J. J. Hill, as President and as an Individual.

Dated St. Paul, Minn., Aug. 30th, A. D. 1902.

Endorsed:

Stipulation. Filed September 1st, 1902. Henry D. Lang, Clerk.

Entered 796, C. Eq.
Filed Sept. 10, 1902. Henry D. Lang, Clerk.

M. D. GROVER,
Solicitor.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the District of Minnesota,
Third Division.

THE STATE OF MINNESOTA,

Plaintiff,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY and JAMES J. HILL, as President of the Northern Securities Company and Individually,

Defendants.

The Answer of the Defendant Great Northern Railway Company to the Bill of Complaint of the State of Minnesota.

This defendant, reserving to itself all right of exception to the said bill of complaint, for answer thereto says:

I.

It admits the matters stated in subdivisions I, II and III of said bill, except that it denies that the Northern Securities Company has ever conducted any business in the State of Minnesota, or has ever had any place of business or owned any property in said State, and it denies that the railways or property of the Eastern Railway Company of Minnesota are operated otherwise than under and by virtue of a lease thereof to the Great Northern Railway Company, (which company will be hereinafter styled the Great Northern Company) and denies any knowledge or information sufficient to form a belief as to whether the defendant James J. Hill was on November 13,

1901, or at any other time, the owner of or in possession or control of, or had on said day or at any time subject to his direction or disposition more than a majority or any other amount of the capital stock of said Great Northern Company; it denies that the Northern Pacific Railway Company ever became a corporation of or within the State of Minnesota, or that it ever became subject to the laws thereof, except in so far as it became subject to said laws by filing a copy of its articles with the Secretary of the State of Minnesota and by complying with the statutes of Minnesota relating to the admission into the state of railway companies organized under the laws of other states; and denies that its lines have, since the organization of the Securities Company, been operated subject to the dictation or control of the officers of that company.

II.

It admits that the cities and towns in the State of Minnesota named in subdivision IV of said bill are points on the lines of each of the two defendant railway companies, but denies that the lines of said two railway companies between said points were or are parallel, or that said lines competed for freight or passenger traffic between said points in any different manner or to any greater extent prior to the formation of the Northern Securities Company than they have at all times done since the formation of that company and will continue to do in the future.

It denies that the lines of said defendant railway companies between the State of Minnesota and Puget Sound were or are parallel to each other, or that they have ever been competing lines except at a few points, at nearly all of which points they competed and still compete with the lines of other railway companies; and it denies that said defendant railway companies have at any time competed with each other for passenger or freight traffic in any other or different manner or to any greater extent than they have continuously done since the formation of the Northern Securities Company, and will continue to do in the future.

It admits that the lines of said defendant railway companies 313
are the only lines of any single railway company traversing east and west all the northern tier of states of the United States west of the Mississippi river. But it denies that said lines are the only lines crossing the State of Minnesota and connecting the Pacific ocean by rail with points in said state; or that they are the only lines connecting the territory of said northern tier of states or the territory tributary thereto by rail with the Pacific ocean. And it denies each and every statement in said subdivision IV of said bill contained not hereinabove expressly admitted. 314

III.

It admits that large quantities of swamp lands were granted by the United States to the State of Minnesota by the acts of Congress mentioned in subdivision V of said bill, for the purposes in said act set forth. But it knows not, and has not been informed save by said bill, and cannot set forth as to its belief or otherwise, as to what quantity, if any, of said lands, are now owned by said state, nor as to the value, if any, of such lands or any of them; nor to what extent, if at all, the value or salability of said lands, or any of them, depends upon competition of any kind between the said defendant railway companies, or upon the construction of railway lines by both or either of said defendant railway companies. 315

It admits that each of said companies has heretofore, and as the circumstances of each case warranted, from time to time built spur or branch lines into territory adjacent to its railway as well as into new territory; but it denies that such construction has been by reason of rivalry between said companies, or that the construction of such spur or branch lines has 316
been or will be prevented, or lessened, or deferred, or in any way affected by the formation of the Northern Securities Company. And it denies that the matters, or any of them, alleged in said bill have prevented or hindered, or will in the future prevent or hinder, the construction by the plaintiff, or by any person or corporation thereto authorized by plaintiff of any line or lines of railroad that the plaintiff may deem necessary

317 or advantageous to bring its swamp lands into market and secure their settlement and occupation.

And it denies each and every allegation in said subdivision V of said bill not herein expressly admitted.

IV.

It admits the plaintiff's ownership, maintenance and operation of the institutions named in subdivision VI of said bill, and that a small portion and no more of the supplies for some of said institutions requires to be and is in fact carried over
318 the line of one or the other of the defendant railway companies. As to the other matters stated in said subdivision VI this defendant knows not, and has not been informed save by said bill and cannot set forth as to its belief or otherwise in respect of said matters or any of them.

V.

It says that except the grants of swamp lands mentioned in subdivisions VII and VIII of said bill, the grants by plaintiff
319 in aid of railways in Minnesota mentioned in said subdivsions were made by the territory and state of Minnesota merely in execution of trusts reposed in them respectively by acts of Congress granting lands of the United States to aid in the construction of such railways. None of said lands were ever the property of said territory or state, each of whom was a mere conduit to transfer the title to such lands from the United States to the respective corporations by which such railways were built, and said grants, whether congressional, territorial or state, were solely in consideration of the construction, and not of the maintenance of such railways, and
320 none of said grants were made to either of the defendant railway companies. None of such grants nor either of said swamp land grants was a gift to the company receiving the same, but each and every of them was made upon a valuable and full consideration furnished by the company receiving the same. The St. Paul, Minneapolis & Manitoba Railway Company, lessor of the Great Northern Company, purchased and paid full value for all the lands acquired by it from its prede-

cessors under grants made to them. The Northern Pacific 321
Company purchased and paid full value to its predecessors for all the lands in Minnesota referred to in the bill as belonging to it, and neither the Northern Pacific Company nor its predecessor the Northern Pa[illegible] Railroad Company, nor the Great Northern Company, [illegible] received any grant of lands from said territory or state except the grants of swamp lands mentioned in said subdivisions VII and VIII, which grants of swamp lands were made in consideration of the construction only, and not of the maintenance, of the lines in aid of which they were respectively made, and said consideration was long 322
since fully performed.

As to the total amount of grants from the public domain of the United States to aid in building railroads in Minnesota, this defendant knows not and has not been informed save by said bill and cannot set forth as to its belief or otherwise. But it says that besides the grant made by Congress directly to the Northern Pacific Railroad Company in that company's charter, grants were made by Congress, through the medium of the territory and state of Minnesota, for many other lines of railroad than those operated by either of the defendant railroad companies, and to an amount far in excess of the 323
grants for said lines of said companies.

VI.

It admits the making of large shipments of wheat and other products and of merchandise from and to the places mentioned in subdivision IX of said bill. It denies that competition between the defendant railway companies for traffic between said places or any of them was, prior to the organization of the Northern Securities Company, any sharper, or more active, or more productive of lower rates for freight or 324
passengers than it has been at all times since such organization and still is; and denies that such rates have been at any time since the organization of the Northern Securities Company, or now are, or will be in the future any higher than if said company had not been formed. On the contrary it says that, since the formation of said company, such rates have already been largely reduced, and are now and will continue

325 to be lower than those stated in the bill to have been secured by the sharp and active competition therein alleged.

VII.

It denies that the settled and public policy of the State of Minnesota has been to prohibit in any way the consolidation of competing or parallel lines of railway, and says that until the year 1874, which was long after the land grants mentioned in the bill and after the construction of a large portion of the
326 railways of both said Great Northern and Northern Pacific companies, there was no law in Minnesota on the subject; and denies that there is or ever has been any policy or law in said state except such policy as is expressed in the statutes pleaded in paragraph X of the bill, and these statutes the defendant says are in violation of the constitution of the United States; and it further says that such statutes, if otherwise of any validity, have no application to the acts complained of by the plaintiff in its said bill, and are moreover controlled and made of no effect by other legislation of the State of Minne-
327 sota and of the United States.

VIII.

It denies each and every allegation of subdivision XI of said bill.

IX.

It admits the fact and the date of the organization of the Northern Securities Company, and says that it was organized
328 to the best of this defendant's belief for the purposes set forth in its articles of incorporation and for no other purpose whatever.

It admits the fact and the date of the retirement of the preferred stock of the Northern Pacific Railway Company, pursuant to a resolution of its board of directors in conformity with the articles of incorporation of said company and the agreement under which said preferred stock was originally created and issued, and that such retirement was effected, in accord-

ance with said articles and agreement, by paying off said 329
stock at par; and that the funds for such payment were procured by the issue and sale of $75,000,000 of bonds of said Northern Pacific Company, convertible, and which have been converted, into an equal amount of its common stock; and that a preferential right to purchase said bonds was given to the common stockholders in proportion to their holdings of such common stock.

It admits that after the formation of the Northern Securities Company and on November 22, 1901, that company did offer to the shareholders of the Great Northern Company to 330
purchase such of their shares as should be offered within sixty days from that date at $180 per share and pay therefor in shares of its own capital stock at par. Except as aforesaid it says that the Securities Company to the best of this defendant's knowledge and belief has not offered or sought to purchase any stock of either of said railway companies in exchange for its own shares. It says that the Securities Company has as it is informed and believes also purchased for cash a large amount of the shares of the defendant railway companies and of other companies. Except as herein admitted it denies each and every allegation in subdivision XII 331
of said bill.

X.

It denies that any of the acts alleged in subdivision XIII of said bill were done in furtherance of the agreement therein referred to or in furtherance of any of the agreements alleged in said bill.

XI.

332

It denies that the defendant James J. Hill was at any time the principal or controlling stockholder of the Great Northern Company, and says that while Mr. Hill was for a short time nominally a director of the Northern Pacific Railway Company, he never cast any vote as such. It says that William P. Clough resigned as vice-president of the Great Northern Railway Company, and as a member of its board on the

333 23rd day of November, 1901, and Frederick Weyerhaeuser was elected a director in his place; that the term of Jacob H. Schiff as director expired and William B. Dean was elected a director in his place.

XII.

It denies each and every allegation of subdivision XV of said bill.

XIII.

334 It admits the offer of the Northern Securities Company already stated in subdivision IX of this answer, and except as so admitted it denies each and every allegation of subdivision XVI of said bill.

XIV.

It denies each and every allegation in subdivisions XVII, XVIII and XIX of said bill.

335 XV.

It denies each and every allegation of said bill not hereinbefore expressly admitted.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by the said bill charged; without this that if there is any other matter, cause or thing in said bill contained material or necessary for this defendant to make answer unto and not herein or hereby well and sufficiently answered, confessed and avoided, traversed or denied, the same is not true to the knowledge or belief of this
336 defendant; all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

GREAT NORTHERN RAILWAY COMPANY,
By Jas. J. Hill, President.
M. D. Grover, Solicitor.

(No. Sec. Co. Seal)

STATE OF NEW YORK, 337

ss.

County of New York.

Jas. J. Hill being duly sworn says that he is president of the Great Northern Railway Company and verifies this answer on its behalf; that what is contained in said answer so far as concerns his own acts is true to his own knowledge, and what relates to the act and deed of any other person or persons he believes to be true.

JAS. J. HILL.

Subscribed and sworn to before me the 8th day of September, 1902. 338

MARY AGNES CARTWRIGHT,
Notary Public, Kings County.

(Notarial Seal)

Cert. filed in N. Y. Co.

THE UNITED STATES CIRCUIT COURT
In and for the District of Minnesota,
Third Division.

339

THE STATE OF MINNESOTA
Complainant,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, JAMES J. HILL, as President of the Northern Securities Company, and Individually,
Defendants.

340

The Replication of the State of Minnesota Complainant, to the Answer of the Defendants The Northern Securities Company and James J. Hill, as President Thereof, and Individually.

The replicant saving and reserving unto itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the

joint and several answer of said defendants the Northern Securities Company and James J. Hill, as President thereof, and individually, for replication thereunto, saith that it will aver, maintain and prove its said bill to be true, certain and sufficient in law to be answered unto, and that the joint and several answer of the said defendants is uncertain, evasive and insufficient in law to be replied unto by this replicant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true, all of which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in and by its said bill it has already prayed.

W. B. DOUGLAS,

Attorney General of Minnesota, Solicitor for Complainant.

M. D. Munn,

Geo. P. Wilson,

Of Counsel.

Endorsed:

Replication of Complainant to answer of Northern Securities Company and James J. Hill.

Filed September 24th, 1902. Henry D. Lang, Clerk.

THE UNITED STATES CIRCUIT COURT
In and for the District of Minnesota,
Third Division.

THE STATE OF MINNESOTA,

Complainant,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, JAMES J. HILL, as President of the Northern Securities Company, and Individually.

Defendants.

The Replication of the State of Minnesota Complainant, to the Answer of the Defendant the Great Northern Railway Company.

The replicant saving and reserving unto itself all and all 345
manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant The Great Northern Railway Company for replication thereunto, saith that it will aver, maintain and prove its said bill to be true, certain and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, evasive and insufficient in law to be replied unto by this replicant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed 346
or avoided, traversed or denied, is true, all of which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in and by its said bill it has already prayed.

W. B. DOUGLAS,

Attorney General of Minnesota, Solicitor for Complainant.

M. D. Munn,

Geo. P. Wilson,

Of Counsel.

347

Endorsed:

Replication of Complainant to answer of Great Northern Railway Company.

Filed September 24th, 1902. Henry D. Lang, Clerk.

348 THE UNITED STATES CIRCUIT COURT
In and for the District of Minnesota,
Third Division.

THE STATE OF MINNESOTA,
Complainant,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, JAMES J. HILL, as President
349 of the Northern Securities Company, and Individually.
Defendants.

The Replication of the State of Minnesota Complainant, to the Answer of the Defendant Northern Pacific Railway Company, Defendant.

The replicant saving and reserving unto itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the answer of said defendant the Northern Pacific Railway Com-
350 pany, for replication thereunto, saith that it will aver, maintain and prove its said bill to be true, certain and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, evasive and insufficient in law to be replied unto by this replicant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true, all of which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in and by its said bill it has already prayed.

351 W. B. DOUGLAS,
Attorney General of Minnesota, Solicitor for Complainant.
M. D. Munn,
Geo. P. Wilson,
Of Counsel.

Endorsed:

Replication of Complainant to answer of Northern Pacific Railway Company.

Filed September 24th, 1902. Henry D. Lang, Clerk.

STATE OF MINNESOTA,
County of Ramsey. 352

Edward B. Young, being duly sworn, makes oath and says that on the 3rd day of January, 1903, at the city of St. Paul, in said county, he served the notice of final hearing, which is hereto attached, on M. D. Munn, one of the solicitors for the complainant therein named, personally, by handing to and leaving with J. H. Hintermister, Jr., a copy thereof. That at the time of such service said Hintermister was the clerk of said M. D. Munn, and was in charge of the office of said Munn, who was then absent from his office. 353

EDWARD B. YOUNG.

Subscribed and sworn to before me this 3rd day of January, 1903.

GEO. P. METCALF,
(Notarial Seal) Notary Public, Ramsey County, Minn.

UNITED STATES CIRCUIT COURT,
District of Minnesota.
Third Division. 354

THE STATE OF MINNESOTA,
Plaintiff,

vs.

THE NORTHERN SECURITIES COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually.

Defendants 355

IN EQUITY.

To Messrs. W. B. Douglas, M. D. Munn and Geo. P. Wilson, Solicitors for Complainant:

You will please take notice that the above entitled cause will be brought on for final hearing on the pleadings and

356 proofs therein at the next stated term of said Court, to be held in the city of St. Paul, on the 13th day of January, 1903, at the opening of the said term, or as soon thereafter as counsel can be heard.

Dated January 2, 1903.

Yours,

M. D. GROVER,
C. W. BUNN,
YOUNG & LIGHTNER,
Solicitors for the Defendants.

357

Endorsed:

Notice of final hearing.
Filed January 3rd, 1903. Henry D. Lang, Clerk.

UNITED STATES CIRCUIT COURT,
District of Minnesota.
Third Division.

358

THE STATE OF MINNESOTA,

Plaintiff,

vs.

THE NORTHERN SECURITIES COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually,

Defendants.

359

IN EQUITY.

To Henry D. Lang, Esq., Clerk of said Court:

You will please set down the above entitled cause, and place the same upon the calendar for the next stated term of

the Court, to be held on the 13th day of January, 1903, for final hearing upon the pleadings and proofs. 360

Dated January 2, 1903.

Yours, etc.,

M. D. GROVER,
C. W. BUNN,
YOUNG & LIGHTNER,
Solicitors for the Defendants.

Endorsed:

Praecipe to place cause on calendar for final hearing.
Filed January 3, 1903. Henry D. Lang, Clerk. 361

UNITED STATES CIRCUIT COURT,
For the District of Minnesota.
Term Minutes, June Term, A. D. 1902.

Jany. 5th, 1903.

Monday morning.

Court opened pursuant to adjournment.

Present, Hon. William Lochren, Judge; Hon. Charles C. Houpt, U. S. District Attorney. Hon. William H. Grimshaw, U. S. Marshal; Henry D. Lang, Clerk. 362

STATE OF MINNESOTA

vs.

NORTHERN SECURITIES COMPANY et al.

C. EQUITY No. 791. 363

Ordered, that this cause be and the same hereby is continued until the next regular term of this Court to be held at St. Paul, Minnesota.

Ordered, that this Court do now adjourn until Friday morning next at ten o'clock.

A true record.

Attest: Henry D. Lang, Clerk.

364

UNITED STATES CIRCUIT COURT,
District of Minnesota.
Third Division.

STATE OF MINNESOTA,
Complainant,

vs.

365 NORTHERN SECURITIES COMPANY, NORTHERN PACIFIC RAILWAY COMPANY and GREAT NORTHERN RAILWAY COMPANY et al.,
Defendants.

Your petitioner respectfully represents to the Court that issues were joined in the above entitled action on the 24th day of September, 1902, and said action is now pending in the
366 above entitled Court; that said action is one of an equitable nature, and shortly after the same was at issue, the State of Minnesota duly made application to this Court for the appointment of a Special Examiner to take the testimony in said action, and report the same to this Court.

That on the 4th day of October, 1902, an order was made appointing Frederick G. Ingersoll Special Examiner to take the testimony for complainant and defendants, that at the time said appointment was made, said Ingersoll had been appointed as Special Examiner to take the testimony in an action pending in this Court, wherein the United States was
367 complainant and the above named defendants, defendants. That the State of Minnesota has not been able to finish the taking of its testimony, because the first opportunity that presented itself for the taking of testimony on the part of the State of Minnesota was on the 17th day of November, 1902. Prior to that time the Special Examiner, as well as the attorney for said defendants, were engaged in taking testimony in the suit of the United States against the above named de-

fendants. Since the 17th day of November, 1902, the State 368
of Minnesota has proceeded as rapidly as possible in taking its testimony, but has not completed the same, and will not be able to complete the same until some time during the month of January, 1903, as a great deal of said testimony has to be taken outside of the State of Minnesota, principally in New York, and other eastern states; that the Special Examiner has fixed December 29th, 1902, at the City of New York, for the continuation of the taking of testimony on behalf of the complainant.

Wherefore, your petitioner prays for an order of this Court, 369
extending the time within which the testimony can be taken, to and including the first day of February, A. D. 1903.

THE STATE OF MINNESOTA,
By W. B. Douglas, Atty. General.

Geo. P. Wilson and
M. D. Munn,
Of Counsel.

370

STATE OF MINNESOTA,
ss.
County of Ramsey.

M. D. Munn, being first duly sworn, upon oath deposes and says: That he is one of the counsel for the State of Minnesota in the foregoing entitled action, that he has read the foregoing petition, and that the same is true to the best of his knowledge, information and belief.

M. D. MUNN. 371

Subscribed and sworn to before me this 19th day of Dec., A. D. 1902.

J. HENRY HINTERMISTER, JR.,
(Notarial Seal) Notary Public, Ramsey County, Minnesota.

372 UNITED STATES CIRCUIT COURT,
District of Minnesota.
Third Division.

STATE OF MINNESOTA,
Complainant,

vs.

NORTHERN SECURITIES COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and GREAT NORTHERN RAILWAY COMPANY et al.,
373 Defendants.

ORDER.

Upon reading the foregoing petition,

It is ordered, that the time for the taking of the testimony in the above entitled action by the respective parties, is hereby extended to and including the fifteenth day of February, A. D. 1903, and that thereafter the testimony shall be printed as speedily as possible and filed with the Clerk of this
374 Court as provided by the rules of said Court.

Dated at St. Paul, Minnesota, this 20th day of December, A. D. 1902.

WM. LOCHREN,
Judge.

Endorsed:

Petition and Order.
Filed January 6th, 1903. Henry D. Lang, Clerk.

375 UNITED STATES CIRCUIT COURT,
For the District of Minnesota.
Term Minutes, January Term, A. D. 1903.

Jany. 13th, 1903.

Pleas before the Circuit Court of the United States, for the Third Division of the District of Minnesota, at a stated term of said Court held pursuant to the Act of Congress at St.

Paul, Minnesota, on the second Tuesday of January, A. D. 376
1903, being the 13th day of January, A. D. 1903.

Present, Hon. William Lochren, Judge; Hon. Charles C. Houpt, U. S. District Attorney, by Albert J. Smith, Assistant; Hon. William H. Grimshaw, U. S. Marshal; Henry D. Lang, Clerk.

STATE OF MINNESOTA,

377

vs.

NORTHERN SECURITIES COMPANY, et al.

C. EQUITY No. 791.

The motion of the defendants in the above entitled cause that, (1) that the ex parte order heretofore made by the Court enlarging complainant's time for taking testimony, be va- 378
cated because issued irregularly and improvidently, and because of the absence of sufficient or any cause therefor, and

(2) That the Court make an order fixing a time within which the parties on each side shall close their testimony, and fix a date not later than the 15th day of April at which said cause shall be heard, and

(3) For such other and further relief as may be just.

Messrs. George B. Young and C. W. Bunn appear for and argue said motion on behalf of the defendants and Mr. George P. Wilson appears for and argues in opposition thereto on behalf of the complainant, and after hearing the arguments 379
and statements of the solicitors for the respective parties, and being fully advised in the premises, upon due consideration it is by the Court ordered that the order heretofore made on the 20th day of December, A. D. 1902, and filed and entered in this cause on the 6th day of January, A. D. 1903, be and the same hereby is vacated and set aside.

380 It is further ordered that the complainant herein have to and including the first day of February, A. D. 1903, within which to take its testimony in chief and that the defendants herein have to and including the 15th day of February, A. D. 1903, thereafter within which to take their testimony in reply and that the complainant have to and including the first day of March, A. D. 1903, within which to take its testimony in rebuttal, at which time, unless otherwise ordered, the taking of the testimony herein shall be closed.

It is further ordered that this cause shall stand for hearing at this term of Court at a time to be hereafter agreed upon
381 suitable to the convenience of Court and counsel.

* * * * * * * * * * *

A true record.

Attest: Henry D. Lang, Clerk.

384

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA.

Term Minutes. January Term, A. D. 1903. June 5th, 1903.

Friday morning. Court opened pursuant to adjournment.
Present: Hon. William Lochren, Judge; Hon. Charles C. Houpt, U. S. District Attorney; Hon. William H. Grimshaw, U. S. Marshal; Henry D. Lang, Clerk, 385
by Louise B. Trott, Deputy.

STATE OF MINNESOTA,

vs. C. Equity No. 791.

NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, THE NORTHERN 386
PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Great Northern Railway Company, and Individually.

This cause coming on regularly for hearing, the parties appear by their respective solicitors. Hon. W. B. Douglas, Attorney General for State of Minnesota, Mr. M. D. Munn and Geo. P. Wilson appear on behalf of the complainant. Mr. George B. Young appears on behalf of The Northern 387
Securities Company and James J. Hill. Mr. M. D. Grover appears on behalf of the Great Northern Railway Company, and Mr. C. W. Bunn appears on behalf of the Northern Pacific Railway Company.

Hon. W. B. Douglas opens and states the cause to the Court on behalf of the complainant.

The Court takes a recess until 2 o'clock p. m.

388 The Court resumes proceedings at 2 o'clock p. m.

Hon. W. B. Douglas resumes and concludes his argument on behalf of the complainant.

Mr. George P. Wilson argues said cause on behalf of the complainant. And the hearing and argument thereof not being concluded at the hour of adjournment, it is by the Court ORDERED that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at 10 o'clock.

ORDERED that this Court do now adjourn until tomorrow morning at 10 o'clock.

389 A true record.

Attest: HENRY D. LANG,
Clerk.
By Louise B. Trott, Deputy.

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390 UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA.

Term Minutes. January Term, A. D. 1903. June 6th, 1903.

Saturday morning. Court opened pursuant to adjournment.

391 Present: Hon. William Lochren, Judge; Hon. Charles C. Houpt, U. S. District Attorney; Hon. William H. Grimshaw, U. S. Marshal; Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

392

STATE OF MINNESOTA,

vs. C. Equity No. 791.

NORTHERN SECURITIES COMPANY et al.

This day come again the parties to this cause by their respective solicitors, and the further hearing and argument thereof is proceeded with as follows: 393

Mr. George P. Wilson resumes and concludes his argument on behalf of the complainant.

The Court takes a recess until 2 o'clock p. m.

The Court resumes proceedings at 2 o'clock p. m.

Mr. George B. Young states and argues the cause to the Court on behalf of the defendants.

And the hearing of said cause not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until Monday morning at 10:30 o'clock.

ORDERED that this Court do now adjourn until Monday morning next at 10 o'clock. 394

A true record.

Attest: HENRY D. LANG,
Clerk.

By Louise B. Trott, Deputy.

396 UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA.

Term Minutes. January Term, A. D. 1903. June 8th, 1903.

Monday morning. Court opened pursuant to adjournment. Present: Hon. William Lochren, Judge; Hon. Charles C. Houpt, U. S. District Attorney; Hon. William H. Grimshaw, U. S. Marshal; Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

397

STATE OF MINNESOTA,

vs. C. Equity No. 791.

NORTHERN SECURITIES COMPANY et al.

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398 This day come again the parties to this cause by their respective solicitors and the further hearing thereof is proceeded with as follows:

Mr. George B. Young resumes his argument on behalf of the defendants.

The Court takes a recess until 2 o'clock p. m.

The Court convenes at 2 o'clock p. m.

Mr. George B. Young resumes his argument on behalf of the defendants.

And the argument of said cause not being concluded at the hour of adjournment, it is by the Court ordered that
399 further proceedings herein be and they hereby are postponed and continued until tomorrow morning at 10 o'clock.

ORDERED that this Court do now adjourn until tomorrow morning at 10 o'clock.

A true record.

Attest: HENRY D. LANG,
Clerk.
By Louise B. Trott, Deputy.

400

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA.

Term Minutes. January Term, A. D. 1903. June 9th, 1903.

Tuesday morning. Court opened pursuant to adjournment. Present: Hon. William Lochren, Judge; Hon. Charles C. Houpt, U. S. District Attorney; Hon. William H. Grimshaw, U. S. Marshal; Henry D. Lang, Clerk, by Louise B. Trott, Deputy. 401

STATE OF MINNESOTA,

vs. C. Equity No. 791.

THE NORTHERN SECURITIES COMPANY et al. 402

This day come again the parties to this cause by their respective solicitors, and the further hearing thereof is proceeded with as follows, to-wit:

Mr. George B. Young resumes and concludes his argument on behalf of the defendants.

Mr. C. W. Bunn argues and concludes on behalf of the defendants.

Mr. M. D. Grover argues said cause on behalf of the defendants. 403

The Court takes a recess until 2 o'clock p. m.

The Court resumes proceedings at 2 o'clock p. m.

Mr. M. D. Grover resumes and concludes his argument on behalf of the defendants.

And the argument of said cause not being concluded at the hour of adjournment, it is by the Court ordered that

404 further proceedings herein be and they hereby are postponed and continued until tomorrow morning at 10 o'clock.

ORDERED that this Court do now adjourn until tomorrow morning at 10 o'clock.

A true record.

Attest: HENRY D. LANG,
Clerk.
By Louise B. Trott, Deputy.

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405 UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA.

Term Minutes. January Term, A. D. 1903. June 10th, 1903.

Wednesday morning. Court opened pursuant to adjournment.

Present: Hon. William Lochren, Judge; Hon. Charles
406 C. Houpt, U. S. District Attorney; Hon. William H. Grimshaw, U. S. Marshal; Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

STATE OF MINNESOTA,

vs. C. Equity No. 791.

NORTHERN SECURITIES COMPANY et al.

407

This day come again the parties to this cause by their respective solicitors, and the further hearing thereof is proceeded with as follows, to-wit:

Mr. M. D. Munn sums up and argues said cause on behalf of the complainant.

The Court takes a recess until 2 o'clock p. m.

The Court resumes proceedings at 2 o'clock p. m.

Mr. M. D. Munn resumes his argument on behalf of the complainant. 408

And the argument of said cause not being concluded at the hour of adjournment, it is by the Court ordered that further proceedings herein be and they hereby are postponed and continued until tomorrow morning at 10 o'clock.

ORDERED that this Court do now adjourn until tomorrow morning at 10 o'clock.

A true record.

Attest: HENRY D. LANG,
Clerk. 409
By Louise B. Trott, Deputy.

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA.

Term Minutes. January Term, A. D. 1903. June 11th, 1903.

Thursday morning. Court opened pursuant to adjournment. 410

Present: Hon. William Lochren, Judge; Hon. Charles C. Houpt, U. S. District Attorney; Hon. William H. Grimshaw, U. S. Marshal; Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

STATE OF MINNESOTA,

vs. C. Equity No. 791. 411

NORTHERN SECURITIES COMPANY et al.

This day come again the parties to this cause by their respective solicitors, and the further hearing thereof is proceeded with as follows, to-wit:

412 Mr. M. D. Munn resumes his argument on behalf of the complainant.

The Court takes a recess until 2 o'clock p. m.

The Court resumes proceedings at 2 o'clock p. m.

Mr. M. D. Munn resumes and concludes his argument on behalf of the complainant.

Thereupon said cause is duly submitted to and by the Court taken under advisement.

ORDERED that this Court do now adjourn until tomorrow morning at 10 o'clock.

A true record.

413

Attest: HENRY D. LANG,
Clerk.
By Louise B. Trott, Deputy.

CIRCUIT COURT OF THE UNITED STATES.
District of Minnesota.
Third Division.

414

THE STATE OF MINNESOTA,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually.

415

Equity No. 791.

DECISION.

This cause came on for final hearing at St. Paul, June 5, 1903, upon the bill, answers and testimony taken and on file. That the cause is one of equitable cognizance and that this

court has rightful jurisdiction of the same was conceded by 416
counsel. The cause was fully argued and upon full consideration the following facts appear and are established:

1. The defendant, the Great Northern Railway Company, is a Minnesota corporation, which has, as stated in the bill, acquired the property, rights and franchises and the management and control, of various specified railway corporations. That the defendant, the Northern Pacific Railway Company, is a Wisconsin corporation, which filed its articles of incorporation in Minnesota, and in 1896 purchased and acquired all the railroad properties, railway lines, right of way, rolling stock and franchises of the earlier Northern Pacific Railroad Company; and has also as stated in the bill acquired 417
the property rights and franchises, and the management and control of other specified railway corporations. That said Great Northern and Northern Pacific Companies, now and for many years, severally own, operate and maintain a main line of railway extending from the Cities of Duluth, St. Paul and Minneapolis westward, across the State of Minnesota, North Dakota, Montana, Idaho and Washington to Puget Sound; with many branches along the route of each; and that said two systems of railroad are as to each other par- 418
allel and competing lines of railway; at least between cities and towns reached or traversed by the lines of both of said two railways, among which are Duluth, St. Paul, Minneapolis, Anoka, St. Cloud, Moorhead, East Grand Forks and several other towns in the State of Minnesota; and that a reasonable degree of competition for the traffic between places so situated on both said lines of railway has existed in the past years.

2. The State of Minnesota has heretofore made large grants of its swamp lands in aid of the construction of portions of the railways of each of said companies; and in the 419
support of its various state institutions, educational, eleemosynary and otherwise, transports annually large quantities of goods, stores and supplies upon said two railroads. And large quantities of wheat and other products, owned and produced by citizens and inhabitants of Minnesota, are annually carried over said railroads from competitive places in the western part of the state, to Duluth, St. Paul and Minneapolis.

420 3. In 1874, the legislature of the State of Minnesota enacted a statute, known as Chapter 29 of the General Laws of 1874, as follows:

"Section 1. No railroad corporation, or the lessees, purchaser or managers of any railroad corporation, shall consolidate the stock, property or franchise of such corporation with, or lease or purchase the works or franchise of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the con-
421 trol of a parallel or competing line, and the question whether railroads are parallel or competing lines shall when demanded by the party complainant, be decided by a jury as in other civil cases."

In 1881 the legislature of Minnesota enacted a statute, (Laws of 1881, Chap. 84), authorizing and empowering any railroad corporation, domestic or foreign, to consolidate its stock and franchises with, or lease or purchase, or in any way become owner of or control the stock of any other railroad corporation when their respective railroads can be
422 connected and operated together so as to constitute a continuous main line with or without branches. But the same statute reiterated the prohibition against the consolidation of railroads having parallel and competing lines; and by a subsequent amendment of this statute (Laws 1899, Chap. 229) the same prohibition was again enacted almost in the language of the Act of 1874, above quoted.

In 1899 the legislature of Minnesota also enacted a statute known as the "Anti-Trust Law" (Laws of 1899, Chap. 359), which provided:

"Section 1. Any contract, agreement, arrangement, or
423 conspiracy, or any combination in the form of a trust or otherwise, hereafter entered into which is in restraint of trade or commerce within this state, or in restraint of trade or commerce between any of the people of this state and any of the people of any other state or country, * * * is hereby prohibited and declared to be unlawful."

Severe penalties are denounced against all who shall violate the act, including the forfeiture of the charter of any

offending corporation. And it is made the duty of the attor- 424
ney general to institute in the name of the state proceedings in any court of competent jurisdiction, to recover the penalties imposed, and also, in the case of offending corporations, to enforce the forfeiture of their charters.

4. The railroads both of the Great Northern and Northern Pacific Companies, between the Missouri River and Puget Sound pass through long stretches of mountainous and unsettled or sparsely settled country which supplies comparatively little traffic or business to these railroads. But the forests near Puget Sound produce a great supply of 425
lumber, readily marketable east of the Missouri River and in Iowa, Illinois, Nebraska and Missouri. To transport it over these railroads (which in the direction of the principal markets for the lumber, ended at St. Paul) at rates which would make the business practicable it was necessary that west bound freight should be secured for the cars which would bring the lumber eastward. The Great Northern Company and Northern Pacific Company were alike interested in this business, and acting in harmony in the spring of 1901, purchased substantially all the shares of the Chicago, Burlington and Quincy Railway Company, (each company 426
buying and owning one-half), at $200 per share, amounting to $108,000,000 par value, the cost being about $216,000,000; paying for the same in the joint 4 per cent bonds of the two purchasing companies. As the "Burlington" system so purchased, has a railway extending from Minneapolis and St. Paul to Chicago, and railways covering large portions of the State of Illinois, Iowa, Missouri and Nebraska, and connecting again with the Northern Pacific at Billings in Montana, it, though still managed by its own directors and officers, affords to the two purchasing railroads the needed mutual extension to transport their trains of lumber to desirable 427
markets, and to bring return traffic, in coal, iron, steel, cotton and other commodities, needed on the route of these two railroads, and on the Pacific Coast, and in the trade growing up between Puget Sound and Alaska, China and Japan.

The Union Pacific Railway extends from Omaha to Ogden, and by its connection with the Central or Southern Pacific, to San Francisco with branches and connections which reach

428 points on the Great Northern and Northern Pacific in Montana and Washington. As the Burlington System connects with the Union Pacific at Omaha and elsewhere in Nebraska, and extends east, north and south from Omaha much of the freight gathered by it, bound for the Pacific Coast, passed over the Union Pacific. Hence the purchase of the Burlington System by the Great Northern and Northern Pacific, which was completed about April 1, 1901, led the managers of the Union Pacific Company to fear a diversion of this traffic from the railway of the Union Pacific to the railways of the two purchasing companies; and Edward H. Harriman,
429 representing the Union Pacific Company, applied to James J. Hill and J. Pierpont Morgan, who respectively represented the Great Northern and Northern Pacific Companies in such purchase, to permit the Union Pacific Company to join and share with them in the purchase of the Burlington System; but his application was declined. Thereupon the said Harriman and others acting in the interest of the Union Pacific Company began rapidly and quietly to purchase the stock of the Northern Pacific Company, intending thus to acquire a majority of that stock and the control of that com-
430 pany, with its half interest in the Burlington System. The common stock of the Northern Pacific Company was $80,000,000, and it had issued, and had outstanding preferred stock to the amount of $75,000,000, which had the same voting power as the common stock, but which the company by the action of its directors might pay off at par, and thus retire on the first day of January, 1902, or on the first day of any succeeding year. During the month of April and first week in May, 1901, the said Harriman and others acting with him in the interest of the Union Pacific Company purchased and held a little more than $37,000,000 of the common stock, and
431 a little more than $41,000,000 of the preferred stock, of the Northern Pacific Company being more than $78,000,000 in all, and more than a majority of the aggregate of the common and preferred stock of that company. But in the first week of May, 1901, J. P. Morgan & Co., becoming apprehensive, purchased $15,000,000 of the common stock of the Northern Pacific Company, which, with their previous holding of that stock, and those of Mr. Hill and other stockhold-

ers of the Northern Pacific Company, who in this matter 432
acted with Mr. Morgan, gave the latter the control of more than $41,000,000 of such common stock, being more than a majority of that stock. As it was known that Mr. Morgan and his associates would insist upon the payment and retirement of the preferred stock on January 1, 1906, and that the Board of Directors of the Northern Pacific Company would take action to that end, Mr. Harirman and his associates abandoned their attempt to obtain the control of that company.

For many years, including the period of the construction 433
of the Great Northern Company's railroad from the State of Minnesota to Puget Sound, and its branches and extensions in other directions, Mr. Hill, with the acquiescence of all the stockholders, had been the President and active Manager of that company. The stock of that company aggregated $125,000,000, and he, with a small number of other holders of large amounts of that stock, had for some time considered the project of uniting their holdings of stock by transferring the same to some corporation to whom any others of the holders of such stock might transfer their holdings, and thus assure permanency to the management and 434
policy of the company. The attempt in the interest of the Union Pacific Company to purchase a majority of the stock of the Northern Pacific Company and obtain the control of that company, and through it of the Burlington System, alarmed the managers and stockholders of the Northern Pacific Company and led them to consider the feasibility of forming a holding company which should purchase or secure in exchange for its own stock more than a majority of the stock of the Northern Pacific Company and hold the same secure against any raid in the future in the interest of a rival or hostile railroad. Mr. Hill and the stockholders referred to 435
of the Great Northern Company were likewise alarmed by such attempt in the interest of the Union Pacific Company to obtain control of the Northern Pacific, and through it of the Burlington System, a result which they apprehended would injuriously affect the property of the Great Northern Railroad and the country traversed by it and by the Northern Pacific Railroad. And in the project of establishing a

436 holding company to purchase and hold a majority of the stock of the Northern Pacific Company they joined for the purpose of selling to such holding company and placing therein their own stock in the Great Northern Company and permitting all other stockholders of the same company who might so choose to do likewise, and thus accomplish their purpose above stated of giving permanency to the management and policy of the Great Northern Company.

The incorporation of the Northern Securities Company under the General Laws of New Jersey and with a capital of $400,000,000 was completed Nov. 13, 1901. Neither the
437 Great Northern Company nor the Northern Pacific Company by any act of its directors, or any corporate act, had anything to do with the formation or subsequent action of the Northern Securities Company; but Mr. Morgan, Mr. Hill and other stockholders of the Northern Pacific Company and Great Northern Company were individually the promoters who caused and procured the incorporation of the Northern Securities Company for the purposes above stated. The Northern Securities Company when formed offered and agreed to purchase and to pay for in its own stock at par
438 ($100 per share) any stock of the Northern Pacific Company at the price of $115 per share and any stock of the Great Northern Company at the price of $180 per share; and large amounts of the stocks of said two railroads were, at such rates and so paid for, purchased from said promoters and other stockholders of said two railroad companies by said Northern Securities Company. About the same time Mr. Harriman and his associates sold to J. P. Morgan & Co. all the Northern Pacific Company stock which they had purchased as aforesaid—both common and preferred—amounting to more than $78,000,000, and said J. P. Morgan & Co. at
439 the same time sold all the same stock to the Northern Securities Company, who paid the consideration therefor directly to Mr. Harriman and his associates, a part of such consideration being something more than $82,000,000 of the stock of said Northern Securities Company. That purchase was completed on Nov. 18, 1901.

On Jan. 1, 1902, the Northern Pacific Company paid off and retired its preferred stock, having raised the money

for that purpose by an issue of bonds which were made con- 440
vertible and were converted into common stock of that company. Other stockholders of each of said two railroad companies sold their stock to the Northern Securities Company, receiving in payment or exchange therefor, at the rates aforesaid, stock of the last named company, so that by Dec. 1, 1901, said Northern Securities Company had become the owner of considerable more than a majority of the stock of the Northern Pacific Company, and a large amount, but less than a majority, of the stock of the Great Northern Company. Similar purchases from stockholders continued, and at the time of the commencement of this suit the Northern Secu- 441
rities Company had become and still is the owner of about 96 per cent of all the stock of the Northern Pacific Company and of about 76 per cent of all the stock of the Great Northern Company.

CONCLUSIONS OF LAW.

1. It is obvious from the foregoing facts that the Northern Securities Company was incorporated with the purpose and intent on the part of its promoters that it should acquire 442
by purchase, by exchange for its stock, and should own and control a considerable majority of all the stock of the Northern Pacific Company, and thus secure that company against the danger of any future raid upon its stock which might place its management and the resulting control of the Burlington System in the power of any rival railroad corporation whose interests might be hostile to the development and property of the Northern Pacific and Great Northern Companies, and their seaboard terminals, and of the region of country traversed by their railroad systems.

This was the avowed purpose of Mr. Morgan and his asso- 443
ciates who acted with him in this matter, including Mr. Hill and other large stockholders of the Great Northern Company who also held large amounts of stock in the Northern Pacific Company and were apprehensive that any hostile control of the Northern Pacific Company which might sacrifice its interests to a rival would be disastrous to the development and prosperity of the Great Northern Company. And at the very

444 time when the Northern Securities Company was formed and incorporated, by means of the large holdings of Northern Pacific Company stock by himself and his associates acting with him and by the then purchase by J. P. Morgan & Co. of the Harriman holding of such stock, said J. P. Morgan was able at once to transfer and have transferred to the Northern Securities Company a large and controlling majority of the stock of the Northern Pacific Company, as was done, thereby accomplishing (as was believed) the purpose of securing that stock against hostile raids in the future.

445 With respect to the stock of the Great Northern Company the evidence shows that when the Northern Securities Company was incorporated it was the purpose and intent of Mr. Hill and other large stockholders of the Great Northern Company who acted with him to sell and dispose of to the Northern Securities Company, for its stock, their several holdings of stock in the Great Northern Company, aggregating then about $35,000,000, to the end that such large amounts of Great Northern Company's stock should be kept together, and (as it was hoped) aid in giving permanency to the management and policy which had controlled and was controlling

446 the railway and development of that company. And it was their purpose that all other stockholders of the Great Northern Company who might choose to do so, should be permitted to sell or exchange their stock of that company for stock of the Northern Securities Company on the same terms; and it was hoped and expected that many would do so. But the said Hill and his associates had no power or control which could enable them to transfer or cause to be transferred to the Northern Securities Company so much as one-third of the stock of the Great Northern Company. The evidence therefor fails to show that the Northern Securities Company

447 was formed for the purpose of acquiring and holding a majority of the stock of the Great Northern Company as well as that of the Northern Pacific Company, although that result followed soon after, and may have been desired and anticipated.

2. One question in this cause is whether the acquisition by the Northern Securities Company, in the manner above stated, of a majority of the capital stock of both the Great

Northern and Northern Pacific Companies, which own and 448
operate parallel and competing railroads across the State of Minnesota, and its ownership of such stock is a violation of the Minnesota Anti-Trust Law (Laws of Minnesota, 1899, Chap. 359), which provides, as above stated, that "Any contract, agreement, arrangement or conspiracy, or any combination in the form of a trust or otherwise hereafter entered into which is in restraint of trade or commerce within this state * * * is hereby prohibited and declared to be unlawful." Language in the act extending these provisions to interstate commerce is here omitted and disregarded and the 449
act considered valid as to trade and commerce within the state, that being a proper subject for state legislation, though carried on by the same instrumentalities used in interstate commerce. The language just quoted is evidently taken from the Act of Congress of July 2, 1890 (26 Stat. 209, Chap. 647), known as the Sherman Anti-Trust Act, which has received consideration by the Supreme Court of the United States in several cases.

In U. S. vs. E. C. Knight Co., 156 U. S. 1, the American Sugar Refining Company, a New Jersey corporation already in control of most of the manufactories of refined sugar in 450
the United States, purchased, with shares of its own stock, the stock of four Philadelphia refineries, and acquired nearly complete control of that business in the country. It was charged that the contracts under which these purchases were made constituted combinations in restraint of trade, and that by entering into them the defendants combined and conspired to restrain the trade and commerce in refined sugar among the several states and with foreign nations. *Held*, that though the contracts of purchase of these refineries would result in a monopoly in the manufacture of refined sugar, an article certain to enter into commerce, yet the 451
manufacture of the article was no part of commerce, and therefore the contract had no *direct* relation to commerce, even though to dispose of the product, the instrumentality of commerce would be necessarily invoked. The product would not enter into commerce till transportation began, and the contracts had no reference to transportation.

452 In U. S. vs. Trans-Missouri Freight Association, 166 U. S. 290, it was held that the Sherman Anti-Trust Act applied to railroads, and prolibited all contracts in restraint of trade, whether reasonable or unreasonable, and also, that articles of agreement by which some seventeen railroad companies formed that association, in which each railroad company had a representative, empowering the association to fix reasonable rates for the transportation of freight on said railroads (many of whom were competitive), and change such rates on proper occasion, and binding the railroad companies, under penalties, to conform their charges for transportation to
453 the rates so to be established, was a contract in violation of that anti-trust act. Plainly, the *direct* and only subject of this agreement was its provision for the fixing, controlling and maintaining rates for the transportation of freight over these railroads.

U. S. vs. Joint Traffic Association, 171 U. S. 505, was like the case last cited. The association was formed between thirty-one railroad companies, engaged in transportation between Chicago and the Atlantic coast. The association formed of representatives of the companies was given con-
454 trol over competitive transportation of freight and passengers, with power to fix rates, fares and charges, and change the same from time to time; and to these rates the railroad companies bound themselves to conform. The principal difference between this case and the one last mentioned was that by the terms of this agreement the association was to co-operate with the Interstate Commerce Commission, to secure stability and uniformity in the rates, fares and charges established. It was held that this agreement also violated the anti-trust act.

In Hopkins vs. U. S., 171 U. S. 578, the members of the
455 Kansas City Live Stock Exchange did business at the Kansas City Stock Yards, located partly in Kansas City, Kansas, and partly in Kansas City, Missouri, dealing on their own account or as commission merchants in live stock shipped from surrounding states and territories, to the owners of which they often made advances before shipment. They were bound by articles of association and by-laws, which, among other things, fixed the minimum rates for commissions, for

bade the giving of information of the condition of the mar 456
ket, except under specified circumstances, and forbade all dealing with any person who violated the rules of the exchange or with an expelled or suspended member. *Held*, that the business so transacted was not commerce, although it furnished aids and facilities to interstate commerce. The Court said:

"The contract condemned by the statute is one whose *direct and immediate effect* is a restraint upon that kind of trade or commerce which is interstate. Charges for such facilities as we have already mentioned are not a restraint upon that trade, although the total cost of marketing a subject 457
thereof may be thereby increased. Charges for facilities furnished have been held not a regulation of commerce, even when made for services rendered, or as compensation for benefits conferred. Sands vs. Manistee River Improvement Co., 123 U. S. 288; Monongahela Navigation Co. vs. United States, 148 U. S. 312, 329, 330; Kentucky & Indiana Bridge Co. vs. Louisville, etc., R. R., 37 Fed. Rep. 567."

In Anderson vs. U. S., 171 U. S. 604, the facts were similar to those in the Hopkins case last cited. The holding of the Court is expressed in the syllabus, as follows: 458

"That where the subject-matter of the agreement does not *directly* relate to and act upon and embrace interstate commerce, and where the undisputed facts clearly show that the *purpose* of the agreement was not to regulate, obstruct or restrain that commerce, but was entered into with the object of properly and fairly regulating the transaction of the business in which the parties to the agreement were engaged, such agreement will be upheld as not within the statute, where it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its forma- 459
tion and enforcement upon interstate trade or commerce is in any event but *indirect* and incidental, and not its purpose and object."

In Addystone Pipe & Steel Co. vs. U. S., 175 U. S. 211, six corporations engaged in the manufacture, sale and transportation of iron pipe, and, being located in the states of Ohio, Kentucky, Tennessee and Alabama, entered into a detailed

460 agreement, parcelling among themselves the business of a large number of cities in western and southern states, with the purpose and intent of largely increasing the price at which iron pipe should be furnished to such cities. When any such city sought competitive bids for iron pipe the corporation entitled under this secret agreement to furnish such pipe would make its bid much above a fair market price and the other companies would present still higher bids to give the appearance of competition. The company intended would thus get the contract, but under the same agreement would have to pay a large bonus, to be divided among the other companies.

461 Although these corporations were manufacturers of iron pipe the particular agreement had reference to the sale and delivery of such pipe to municipal customers, its intended and *direct* effect being to exclude competition and raise the price of the commodity. The Court said:

"Where the contract is for the sale of the article and for its delivery in another state the transaction is one of interstate commerce, although the vendor may also have agreed to manufacture it in order to fulfill his contract of sale. In such case a combination of this character would be properly

462 called a combination in restraint of interstate commerce, and not one relating only to manufacture."

The proper construction of the Sherman Anti-Trust Act, so far as it relates to railroad transportation, as deduced from these decisions of the Supreme Court, appears to be this:

(a) The act applies to railroads. And all contracts made between railroad companies for the purpose and having the effect of preventing competition, by fixing rates, or empowering persons to fix them, and agreeing to conform to them when fixed, are in restraint of trade and within the provisions of the statute, whether the rates so fixed are reasonable

463 or unreasonable.

(b) That contracts between divers manufacturers of a commodity respecting their sales of that commodity to be delivered by them outside the state, having the direct effect of stifling competition and raising the cost of the article to the purchaser, is also in restraint of trade and within the statute.

(c) That contracts which do not directly and necessarily affect transportation or rates therefor are not in restraint of trade, or within the statute, even though they may remotely and indirectly appear to have some probable effect in that direction. 464

The State Anti-Trust Act must have the same construction in respect to traffic on railroads within the state.

Neither the Great Northern Company nor the Northern Pacific Company were parties to, or in their corporate capacity had anything to do with, the formation of the Northern Securities Company nor of any of the contracts or proceedings complained of in the bill. The Northern Securities Company 465 is merely an investor in and owner of a majority of the stock of each of these two railroad companies. It is not a railroad company and has no franchise or power to manage or operate or direct the management or operation of either rail road in respect to rates or charges for transportation, or otherwise; and there is no scintilla of evidence that it has sought to control or interfere in respect to any of these matters. It has therefore done no act and made no contract in restraint of trade or commerce. Owning now a majority of the stock of each of these railroad companies, it has the power by voting its stock to elect the Board of Directors— 466 the governing body—of each of these railroad companies. But the Board of Directors of each is a different body from the Board of Directors of the other, as no director of the Great Northern Company can be a director of the Northern Pacific Company. The directors of each railroad company will appoint its managing and other officers, and control its business and policy. Presumably they will seek, in lawful ways only, to increase the business and property of the railroad which they as directors represent.

The action of the defendant Hill in promoting the formation of the Northern Securities Company under the circumstances and for the purposes which the evidence discloses, and investing in its stock by the sale to it of his stock in the two railroad companies, involved no act or contract in restraint of trade or commerce or affecting transportation or rates, more than any ordinary transfer of railroad stock from one person to another. 467

468 That my judgment, after most careful consideration of the facts and the law applicable thereto, as construed by the highest court, leads me to the conclusion that none of the defendants have violated the Minnesota Anti-Trust Act, a conclusion apparently contrary to that reached by the eminent judges who, in this court, recently decided the case of United States vs. Northern Securities Co., 120 Fed. 721, and who will doubtless in another court review this cause upon appeal, has necessarily caused hesitation and careful examination. But the rights of litigants and my own sense of duty alike require that my own deliberate judgment, guided
469 by my understanding of authoritative expositions of the law, be given in all causes tried before me.

The decision of the case last cited, as I read it and understand it, does not specify or point out any contract, agreement or act on the part of the defendants, or of any of them, which is *directly* in restraint of trade or commerce, or which has any *direct* reference to trade, commerce, transportation or rates; nor even any threat or avowed purpose on the part of any defendant to do any such act, or enter into any such contract or agreement. But it is argued that because the
470 Northern Securities Company has become the owner of a large majority of the stock of each of the two railroad corporations it will be for its interest to suppress competition between them, by causing the two Boards of Directors of these railroad corporations, which it can fill by election, to enter into arrangements or agreements in restraint of trade, which will suppress competition; and as a corollary to this reasoning (or conjecture) the decision holds that the formation of the Northern Securities Company and purchase by it of a majority of the stock of each of these railroad companies are acts or contracts in restraint of trade, though of themselves, and
471 without further action (not yet taken, and perhaps never to be taken), by the directors of the two railroad companies, the formation of the Northern Securities Company and its holdings of stock has and can have nothing to do *directly* or indirectly with trade, commerce, transportation or rates.

To epitomize this decision: It is held that it will be for the interest of the Northern Securities Company to restrain trade by suppressing competition between these two railroad

companies; and that by coercing or persuading the two 472
Boards of Directors whom it has the power to elect it will certainly cause them to commit highly penal offences by entering into combinations, contracts and arrangements in restraint of trade, in violation of the anti-trust act, and hence the Northern Securities Company is already guilty of these offences that have never been committed or thought of by its officers or promoters so far as appears, and it must be suppressed and destroyed.

I am compelled to reject the doctrine that any person can be held to have committed, or to be purposing and about to commit a highly penal offence, merely because it can be 473
shown that his pecuniary interests will be thereby advanced, and that he has the power either directly by himself, or indirectly through persuasion or coercion of his agents, to compass the commission of the offence.

Although the bill avers that the acts of the defendants complained of are in violation of the Act of Congress of July 2, 1890 (the Sherman Anti-Trust Act), the State of Minnesota has no authority to enforce that act by bill for injunction. Such suit can only be instituted on behalf of the Federal Government by its attorney general under the special provisions giving the United States Circuit Courts jurisdiction to prevent and restrain by injunction violations of that act. The State Anti-Trust Act contains no provisions for restraining or enjoining violations of its provisions. As before stated, it is a highly penal statute, and without special statutory authority a court of equity has no jurisdiction to restrain the commission of criminal offences which involves no threatened destruction of property or property rights.

3. The charge in the bill that the acts of the defendant contravene the statutes of Minnesota prohibiting the consolidation of parallel and competing lines of railroad pre- 475
sents a different question.

Chapter 29, General Laws of Minnesota, 1874, provides as stated:

"No railroad corporation or the lessors, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchise of such corporation with, or lease or purchase the works or franchise of, or in any way control

476 any other railroad corporation owning or having under its control a parallel or competing line," etc. This is the only statute on that subject of consolidating parallel and competing railroads that need be considered, as it covers whatever is contained in any other. This statute is a valid exercise of the police power of the state. Louisville, etc., R. R. vs. Kentucky, 161 U. S. 677.

The prohibition against consolidating applies:

1. To *railroad corporations.* The Northern Securities Company is not a railroad corporation, and neither the Great Northern Company nor the Northern Pacific Company in its
477 corporate capacity did any of the acts charged.

2. Lessees of railroad corporations. There are none.

3. Purchasers of railroad corporations. Construing this term as applying to those who acquire by deed or decree, having capacity to hold and enjoy the franchises and operate the railroad. There were none in this case.

4. *Managers* of railroad corporations. A railroad manager is the person having the administration charge and oversight of the operation and business of the railroad. Among the parties concerned Mr. Hill alone was a railroad manager. He did not effect any consolidation. He promoted the formation
478 of the Northern Securities Company, and sold to it stock of both railroad companies.

But the complainant contends that when the Northern Securities Company had, about Dec. 1, 1901, purchased and become the owner of a large and controlling majority of the stock of the Northern Pacific Company it became the *purchaser* of that railroad corporation within the meaning of that word as used in the Act of 1874, and became thereby disabled from acquiring, as it afterwards did, a controlling majority of the stock of the Great Northern Company.

479 And upon the subject of purchasing a railroad by buying all the stock, I am cited to Chapter 84, General Laws of Minnesota, 1881, which provides that any railroad corporation may lease or purchase or become the owner or control or hold the *stock* of any other railroad, when their respective railroads can be connected together and form a continuous line with or without branches. But in that case the purchase of the stock would be by a railroad corporation having

capacity to operate the railroad, even aside from the author- 480
ity to do so either expressly or impliedly granted by this statute; and such railroad could therefore rightfully assume the control, management and operation of the railroad, the stock of which it had so acquired.

I am also cited to the case of Pearsall vs. Great Northern Ry., 161 U. S. 646. Pearsall was the owner of 500 shares of the stock of the Great Northern Company and filed the bill in behalf of himself and other stockholders to enjoin the Great Northern Company from entering into and carrying out an agreement with bondholders under mortgages of the Northern Pacific Company who were about to foreclose the 481
mortgages and reorganize that company, issuing new bonds to the amount of $100,000,000, to be guaranteed by the Great Northern Company; also stock to a like amount, one-half of which was to be transferred to the stockholders of the Great Northern Company in consideration of such guaranty, and thereafter at all intersecting points traffic was to be exchanged between the two companies and the common earnings therefrom divided on a mileage basis. The bill averred that the threatened contract if carried out would amount to a consolidation of the two railroads in violation of the 482
said Minnesota Statute of 1874, and endanger the value of complainant's Great Northern stock.

The Court held that the transfer of one-half of the capital stock of the Northern Pacific Company to the shareholders of the Great Northern Company, as a body, for a consideration coming from the Great Northern Company as a corporation, was virtually a transfer of the stock to the Great Northern Company, who, having thus acquired one-half of the stock of the Northern Pacific Company, would easily and certainly obtain the little more necessary to assure it the mastership of the Northern Pacific Company, and result in 483
the probable amalgamation of the two companies in violation of the statute, thus endangering the value of the complainant's shares.

The relief sought by complainant was therefore granted to protect his property interests against *probable* threatened danger. But here again the purport of the holding was that if one *railroad corporation* acquired a controlling majority of

484 the stock of another railroad corporation it could operate it, or control its operation, under its own ample franchises and powers to operate railroads. The case is far from sustaining the idea that if a single investor in railroad stocks, whether a natural person or a corporation without railroad franchises, should acquire by purchase a majority or the whole of the stock of both the Northern Pacific Company and the Great Northern Company, that would work any consolidation of those two companies, or that such purchaser would have any power to manage or operate the railroads of both or either of said railroad companies. In the case under consideration
485 the Court is careful to note the difference in effect between the purchase of a controlling majority of the stock of a railroad corporation by a rival railroad corporation which might control, manage and operate it, and a purchase of the same stock by an individual or individuals though holding whatever amount of stock in the same rival railroad company. The Court says: "Doubtless these stockholders" (of the Great Northern Company) "could lawfully acquire by individual purchases a majority or even the whole of the stock of the reorganized" (Northern Pacific) "company and thus possibly obtain its ultimate control, but the companies would
486 still remain separate corporations with no interests, as such, in common." I am not able to agree with the suggestion that this expression may be regarded as one not necessary to the decision, and therefore perhaps not carefully considered. On the contrary, it seems to me to be a carefully considered and necessary limitation or explanation of general language elsewhere made use of in that decision. It follows that as the Northern Securities Company is merely an investor in the stocks of these railroad corporations, not being itself a railroad corporation, and being without franchise, power or
487 authority to manage, control or operate any railroad, its ownership of a majority of the stocks of these two railroad companies does not come within the prohibitive language of the statute of 1874.

The two companies "still remain separate corporations with no interests, as such, in common." The case would not be different if one natural person with abundant capital should invest in the majority of the stocks of one of these

companies, and another like person should invest in the majority of the stocks of the other company. The interest of the two, if they chose to act in harmony, would be the same as the interest of one person owning the whole. 488

But it is urged that the ownership by the Northern Securities Company of such a large majority of the stock of these two parallel railroads creates a monopoly, having a tendency to prevent competition between these railroads, and presents a case within the mischief intended to be remedied by the Statute of 1874, and should be held, even if outside of the language of that statute, to be within the intention of the legislature which enacted that statute. Also that it is contrary to the public policy of the state, which seeks to promote competition between railroads as well as other common carriers. 489

The terms "monopolies" and "trusts" are perhaps in cases like this too often employed at the bar to all business enterprises requiring and employing great aggregations of wealth, and in the vague sense in which at the hustings they are used to arouse envy and jealousy, forgetting the manifest necessity of such aggregations of wealth to produce the commodities, and their transportation, which our civilization and comfort require. 490

Every railroad corporation is in one sense a monopoly. It has franchises giving rights and powers not common to all citizens. It alone can operate its own railroad, though subject to reasonable regulation by the state.

All monopolies, in a strict sense, rest upon some grant, by the sovereign power, of an exclusive franchise or privilege. And with modern facilities for transportation and communication all the statutes and learning respecting "forestalling," "regrating" and "engrossing" have become archaic; and even the meaning of those terms will hardly now be recognized. 491

Where a statute like that of 1874, with particular detail designates parties whom it prohibits from doing specified acts not otherwise unlawful, to ask a court to extend that statute to parties not named, or to acts not so specified, on the ground that such extension may be conjectured to be within the intention of the legislature, is an invitation to enter the domain of judicial legislation.

492 The policy of a state appears in its legislation; and where a policy is made clear by uniform legislation it has much weight in the interpretation of any doubtful statute. It is clear from several statutes that the policy of the State of Minnesota is opposed to the consolidation of parallel railroads, and to the control by any railroad company of the operation and management of another company's parallel and competing railroad. It is deemed advantageous to the public that at least reasonable competition between such lines of railroad shall continue. While acts of railroad corporations, lessees, purchasers and managers contrary to this policy are
493 prohibited, there is no statute disclosing any policy as to what parties (other than competing railroad corporations), shall own the stock of any railroad corporation or of any number of such corporations, or respecting the amount of such stock which any one party may own.

The bill truthfully states in substance (Paragraph VII) that it has been the settled policy of Minnesota, since its organization as a territory, to develop its resources by the encouragement of railroad building therein; and refers to the many grants of land in aid of railroad construction. As
494 showing the same policy, reference also might be made to very many donations for the like purpose by counties, cities and towns, under legislative authority.

The policy of the state in respect to the operation and management of railroads is disclosed by its statutes; especially by Sections 379 to 403, Vol. 1, Gen. Stat. of Minnesota, under the heading of "Railroad and Warehouse Commission," which closely follows the provisions of congressional legislation respecting interstate commerce, and under clearly specified regulations places the supervision, oversight and control of those matters, particularly the rates for transpor-
495 tation, in the hands of the designated state officials.

It is plain from these statutes, as construed by the Supreme Court of the state, that it is the policy of the state that the railroads, with their rolling stock and appliances, shall be kept in a high state of safety and efficiency; and that rates of transportation, while kept ample to secure such result, shall always be fair, reasonable, stable and uniform. Schedules of rates are to be kept publicly posted at every

station, and no change or deviation from such published rates 496
is permitted, nor any rebates allowed or advantage to one shipper over another and no change in such rates is permitted until after ten days previous published notice has been given. Under this system shippers can count accurately the cost of transportation as an expense in their business, with the assurance that others engaged in like business must incur exactly the like expense; and untrammeled competition between rival railroads resulting in rate wars, sporadic struggles for particular contracts or consignments, as well as all rebates open or secret, all alike unfair or ruinous to carriers and shippers are prohibited under penalties, and intended to 497
be entirely eliminated and done away with, leaving as the only basis of competition between rival carriers the furnishing of the better accommodations, and the greater safety and celerity of carriage. All complaints that published rates are unreasonable are heard and determined by these state officials, who may fix rates binding on the railroads, thus necessarily making rates uniform as between rival railroads. As a result of this policy, and the absolute power of the state officials to fix rates, and keep them at the lowest reasonable figures, competition between rival railroads no longer reduces rates, 498
as it did when railroad companies alone controlled them. On the contrary, where two or more railroads divide the transportation between two places the necessity of considering greater fixed charges and greater cost of administration and operation may make the reasonable rate for transportation greater than if the whole business could be done and was in fact done by one railroad.

However that may be, the Northern Securities Company is but an investing stockholder in these two railroad companies, without power to consolidate them or to interfere with the management or control of either. Because of its 499
large holdings of these stocks it may elect the Board of Directors of each, who must be composed of entirely different persons.

Each board will appoint the officers and control the business and affairs of its own corporation and will naturally seek to increase its business and prosperity. Neither has any power to control the other nor to contract with the other

500 in restraint of trade. There is no presumption that either will disobey the law or be guilty of the commission of penal offences. Should they do these things then the anti-trust act of Minnesota will be for the first time violated, and the railroad corporations, and their offending officials will be amenable to punishment, and to appropriate legal or equitable proceedings.

Decree will be entered dismissing the bill.

WM. LOCHREN,
Judge.

(Endorsed.)

501 Filed Aug. 1, 1903. Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

UNITED STATES CIRCUIT COURT.
District of Minnesota.
Third Division.

502

THE STATE OF MINNESOTA,

Plaintiff,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individu-
503 ally,

Defendants.

DECREE.

This cause having come on to be heard upon the merits at this term, upon pleadings and proofs, W. B. Douglas, At-

torney General, George B. Wilson and M. D. Munn, having been heard on the part of the complainant, and George B. Young, C. W. Bunn and M. D. Grover, on the part of the defendants; and due deliberation having been had, 504

It is Ordered, Adjudged and Decreed, that the said Bill of Complaint herein, be and the same is hereby dismissed.

The defendants may hereafter apply to the Court for an Order allowing costs to be taxed.

WM. LOCHREN,
Judge.

Dated Sept. 9, A. D. 1903.
Filed, September 9, 1903, Henry D. Lang, Clerk. 505

UNITED STATES CIRCUIT COURT.
District of Minnesota.
Third Division.

506

STATE OF MINNESOTA,
Plaintiff,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually,
Defendants.

507

ASSIGNMENT OF ERRORS.

In connection with the petition for an order allowing appeal, and the appeal of the complainant in the above entitled matter, said complainant makes the following assignment and specification of errors:

508 (1) The Court erred in ordering and decreeing that complainant's bill of complaint herein be dismissed.

(2) The Court erred in finding and holding that the agreement, scheme or plan, set forth in complainant's bill of complaint, and shown by the testimony, and which contemplated and resulted in the organization of the Northern Securities Company, with power to purchase, or acquire by exchange, a majority of the stock of both the Great Northern and Northern Pacific Railways, is lawful.

(3) The Court erred in finding and holding that the Northern Securities Company was organized for a lawful purpose.

509 (4) The Court erred in finding and holding that the Northern Securities Company is merely an investing stockholder in the stocks of the Great Northern and Northern Pacific Railway Companies.

(5) The Court erred in finding and holding that the Northern Securities Company is without power to interfere with the management or to control the Great Northern and Northern Pacific Railway Companies, or either of them.

(6) The Court erred in finding and holding that the Board of Directors of the Great Northern and Northern Pacific Rail-

510 way Companies will control the business and affairs of its own corporation uninfluenced by the Northern Securities Company, or its officers.

(7) The Court erred in finding and holding that the power of the Northern Securities Company by virtue of its large holdings of stock in each of said railway companies is limited to the election of the Board of Directors of each of said companies.

(8) The Court erred in failing to find and decide that the Northern Securities Company was organized for the express purpose of getting control, by purchase or exchange, of a

511 majority of the stock of each of said railway companies, and by virtue of such stockholdings to manage and control the business and affairs of each of said railway companies, their respective officers and employes.

(9) The Court erred in failing to find and decide that the Northern Securities Company was organized, in manner and form alleged in complainant's bill, for the purpose and with the intent of evading and avoiding the laws of the complain-

ant state, prohibiting any railroad corporation or the lessees, 512
purchasers or managers of any railroad corporation from consolidating the stock, property or franchise of such corporation with, or to lease or purchase the works or franchise of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line.

(10) The Court erred in finding and holding that the formation of the Northern Securities Company in the manner shown by the testimony, and the acquisition by it of a majority of the stock of the Great Northern and Northern Pacific Railway Companies in the manner and for the purposes shown in said testimony, is not a violation of Chapter 29 of 513
the General Laws of the State of Minnesota for the year 1874; and also Chapter 94 of the General Laws of the State of Minnesota for the year 1881, set forth in complainant's bill of complaint.

(11) The Court erred in finding and holding that the formation of the Northern Securities Company in the manner shown by the testimony and the acquisition by it of a majority of the stock of the Great Northern and Northern Pacific Railway Companies in the manner and for the purposes shown in said testimony is not a violation of Chapter 359 of the 514
General Laws of the State of Minnesota for the year 1899, set forth in complainant's bill of complaint.

(12) The Court erred in finding and holding that the acts of said defendants, and each of them, set forth in said bill of complaint, and as shown by the testimony, does not constitute a violation of each of said laws referred to in assignments numbered ten and eleven.

(13) The Court erred in finding and holding that the Northern Securities Company is not a railroad corporation within the meaning and intent and purpose of Chapter 29 of the General Laws of Minnesota for the year 1874. 515

(14) The Court erred in finding and holding that the Northern Securities Company is not a purchaser of the Great Northern and Northern Pacific Railways within the meaning and intent of Chapter 29 aforesaid.

(15) The Court erred in finding and holding that the Northern Securities Company is not a manager of any railroad company within the meaning of said Chapter 29.

516 (16) The Court erred in finding and holding that the evidence fails to show that the Northern Securities Company was formed for the purpose of acquiring and controlling a majority of the stock of the Great Northern as well as that of the Northern Pacific Railway Company.

(17) The Court erred in finding and holding that the acts of the individual stockholders in promoting the unlawful combination charged in the bill of complaint, and as shown by the testimony, were not the acts of said railway corporations, and cannot be attributed to said railway corporations.

517 (18) The Court erred in finding and holding that after the Northern Securities Company had purchased and become the owner of a large majority of the stock of the Northern Pacific Railway Company it was not disabled thereby from afterwards acquiring a majority of the stock of the Great Northern Railway Company; and in holding and finding that in neither case was it a purchaser of a railroad company within the meaning of the laws of this state set forth in complainant's bill.

518 (19) The Court erred in finding and holding that the Northern Securities Company, by virtue of its ownership of a majority of the stock of each of said railway companies, had no power to manage or to direct the management or the operation of either railroad in respect to rates or charges for transportation or otherwise.

(20) The Court erred in finding and holding that none of the defendants have violated the provisions of Chapter 359 of the Laws of the State of Minnesota for the year 1899.

519 (21) The Court erred in finding and holding that the agreement or arrangement under which the Northern Securities Company was organized, and the organization thereof, to purchase and the purchase by it of a majority and controlling interest of the stock of each of said railway companies, are not acts or contracts in restraint of trade or commerce within the State of Minnesota or without the State of Minnesota, and do not constitute a violation of the state laws set forth in complainant's bill or the National Anti-Trust Law, referred to in said bill.

(22) The Court erred in finding and holding that the ownership of a majority of the stock of both of said railway com-

panies by said Northern Securities Company would not suppress or does not tend to suppress competition between said railway companies in either state or interstate commerce. 520

(23) The Court erred in finding and holding that the formation of the Northern Securities Company, and its holding of stock in said two railway companies, has not, and cannot have, anything to do directly or indirectly with trade, commerce, transportation or rates within the State of Minnesota, or along the lines of said railway companies.

(24) The Court erred in finding and holding that it was not sufficient to entitle complainant to relief that the Northern Securities Company may, by reason of the combination, 521 scheme or plan set forth in the bill of complaint, or by the purchase of a majority of the stock of each of said railway companies, have acquired the power to suppress competition between the two said defendant railway companies.

(25) The Court erred in finding and holding that the complainant could not avail itself of the provisions of the Act of Congress, passed July 2d, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," being Chapter 647 of the Acts of Congress for the year 1890.

(26) The Court erred in finding and holding that the plan 522 and purpose of organizing the Northern Securities Company for the purpose and in the manner set forth in complainant's complaint, and as shown by the testimony; and the subsequent consummation of such plan and purpose by the issuance and exchange of the stock of the Northern Securities Company for a majority of the stock of the Great Northern and Northern Pacific Railway Companies, did not invade and violate the rights guaranteed to the State of Minnesota under Article 4 of the Constitution of the United States.

(27) The Court erred in finding and holding that the formation of the Northern Securities Company under the laws of 523 the State of New Jersey for the purpose set forth in complainant's complaint, and as shown by the testimony; and the attempt of the incorporators of said Northern Securities Company to avail themselves of the sovereign power of New Jersey, delegated by said laws, for the purpose set forth in complainant's complaint, and as shown by the testimony, did not

524 constitute a violation of the right guaranteed to the State of Minnesota under said Article 4 of the Constitution of the United States, which provides that full faith and credit shall be given in each state to the public acts and records of every other state.

(28) The Court erred in ordering and decreeing that appellant was not entitled to the relief prayed for, or to any relief in said action.

(29) The Court's Findings of Fact and Conclusions of Law, hereinbefore specified, are not justified by the evidence and are severally contrary to law.

525 WHEREFORE, Complainant prays that the judgment and decree entered by the Court in the above entitled cause may be reversed according to the prayer and petition of the appeal herein filed.

Dated this 25th day of September, A. D. 1903.

W. B. DOUGLAS,
Attorney General.
M. D. MUNN,
GEO. P. WILSON,
Solicitors and of Counsel for Appellant.

526 Filed Sept. 25, 1903, Henry D. Lang, Clerk.

UNITED STATES CIRCUIT COURT.
District of Minnesota.
Third Division.

STATE OF MINNESOTA,

Plaintiff,

vs.

527 NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually,

Defendants.

The above named complainant, conceiving itself aggrieved by the order and decree made and entered in the above en-

titled cause on the 9th day of September, A. D. 1903, hereby 528
appeals from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and prays that appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree were made, duly authenticated, may be sent to the Supreme Court of the United States, and your petitioner prays that said order and decree may be reviewed and reversed.

Dated this 25th day of September, A. D. 1903.

STATE OF MINNESOTA,
By W. B. DOUGLAS, 529
Attorney General.
M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

The foregoing petition for appeal is granted, and the claim for appeal therein made is allowed.

Dated this 25th day of September, A. D. 1903.

WALTER H. SANBORN,
United States Circuit Judge,
District of Minnesota, Third Division. 530

Filed Sept. 25, 1903, Henry D. Lang, Clerk.

532

UNITED STATES CIRCUIT COURT.
District of Minnesota.
Third Division.

STATE OF MINNESOTA,

Plaintiff,

533

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually,

Defendants.

534

STIPULATION.

It is hereby stipulated on the part of the defendants in the above entitled action that in case an order in said action allowing appeal is made, the same may be without any bond on the part of said complainant and appellant.

Dated this 24th day of September, A. D. 1903.

GEO. B. YOUNG,
Solicitor for Northern Securities Company, and Jas. J. Hill, as President of said Company, and individually.

535

M. D. GROVER,
Solicitor for Great Northern Railway Company.

C. W. BUNN,
Solicitor for Northern Pacific Railway Company.

Filed Sept. 25, 1903, Henry D. Lang, Clerk.

536

UNITED STATES CIRCUIT COURT.
District of Minnesota.
Third Division.

STATE OF MINNESOTA,

Appellant,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually, 537

Appellees.

UNITED STATES OF AMERICA TO THE ABOVE NAMED DEFENDANTS, GREETING:

You, and each of you, are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the City of Washington, D. C., within twenty (20) days from 538 the date hereof, pursuant to an appeal duly allowed by the Circuit Court for the District of Minnesota, filed in the office of the Clerk of the Circuit Court of the United States for the Third Division, of the District of Minnesota, on the 25th day of September, A. D. 1903, wherein the State of Minnesota is appellant and you are appellees, to show cause, if any there be, why the decree made and entered against the said appellant, in the above entitled cause, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, Circuit Judge 539 of the United States for the Eighth Circuit, District of Minnesota, this 25th day of September, in the year of our Lord one thousand nine hundred and three.

Dated this 25th day of September, A. D. 1903.

WALTER H. SANBORN,
United States Circuit Judge,
Third Division, State of Minnesota.

Filed, September 25, 1903, Henry D. Lang, Clerk. By Louise B. Trott, Deputy.

Due service of the within citation is hereby admitted this 25th day of eptember, A. D. 1903.

M. D. GROVER,
Attorney for Defendant, Great Northern Railway Company.
GEORGE B. YOUNG,
Attorney for James J. Hill and Northern Securities Co.,
C. W. BUNN,
Attorney for Northern Pacific Railway Company.

UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES.
District of Minnesota.
Third Division.

I, Henry D. Lang, Clerk of said Circuit Court, do hereby certify and return to the Honorable, the .....

....

....., that the return in the above action consisting of three volumes of evidence, comprising 1,198 pages, and one volume of pleadings, etc., comprising ..... pages, inclusive, is a true and complete transcript of the RECORDS, PROCESS, PLEADINGS, ORDERS, FINAL DECREE and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said Court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Saint Paul, in the District of Minnesota, this ..... day of ....., A. D. 1903.

.....,
Clerk.

ORDER APPOINTING EXAMINER. 1

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA.

Term Minutes. June Term. A. D. 1902, Oct. 2nd, 1902. 2
Thursday morning.

Court opened pursuant to adjournment.

Present:

Hon. William Lochren, Judge.
Hon. William H. Grimshaw, U. S. Marshal,
by Stephen J. Picha, Deputy.
Henry D. Lang, Clerk, by Louise B. Trott, Deputy.

STATE OF MINNESOTA, 3

vs.

THE NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually. } C. Equity No. 791.

4

The motion on the part of the complainant for the appointment of an Examiner to (upon proper notice) take down and report to this Court all the testimony and evidence adduced or offered on behalf of the respective parties to said action,

as well within as without the State of Minnesota, and of the appointment of a skillful stenographer to take down and put into typewriting or other writing under the direction of said Examiner such testimony and evidence, having this day come on to be heard, George P. Wilson and M. D. Munn appeared for the complainant, and George B. Young for the defendants.

After hearing the respective counsel and due consideration by the Court, and no objection being made,

IT IS ORDERED: That FREDERICK G. INGERSOLL, of St. Paul, Minnesota, be, and he is hereby, appointed Special Examiner in the above cause to take and report to this Court the testimony and evidence adduced or offered by the respective parties to said cause, both within and without the State of Minnesota; that unless notice be waived by the solicitors for the respective parties, said Examiner shall give to them, respectively, not less than ten days' notice in writing of the time and place when and where he will attend for the purpose of taking such testimony on behalf of the respective parties, and may continue such hearing from day to day until closed, or by order entered at any duly appointed hearing, may adjourn such hearing from time to time, to such times and place, within or without the State of Minnesota, as may be designated in such order, and, in such case, immediate notice in writing shall be given to the solicitors of the respective parties not present or represented in court when such order is made.

It is further ordered that such testimony shall be taken down by a competent stenographer to be appointed by said examiner, and thereafter put into typewriting under the direction of the said Special Examiner.

Dated 2nd day of Oct. 1902.

By the Court:

WM. LOCHREN, Judge.

A true record.

Attest:

Henry D. Lang, Clerk,

By Louise B. Trott, Deputy.

CLERK'S CERTIFICATE. 3

9

UNITED STATES OF AMERICA,
District of Minnesota, Sct.
Third Division.

10

I, Henry D. Lang, Clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that I have carefully compared the foregoing paper writing with the original thereof, which is in my custody as such Clerk, and that the said paper writing is a correct copy of such original and of the whole thereof, in the cause therein named.

Witness my hand as Clerk, and the Seal of said Court. Done at my office in St. Paul, Minnesota, this 6th day of October, A. D. 1902.

HENRY D. LANG, Clerk,
By Louise B. Trott, Deputy.

11

(U. S. Circuit Court Seal.
District of Minnesota,
Third Division.)

Written on back:

No. 791—Equity C. United States Circuit Court, District of Minnesota, Third Division. State of Minnesota, Plaintiff, vs. Northern Securities Company et al, Defendants. Certified Copy of Order appointing Special Examiner and Stenographer. Filed October 2, 1902.

12

13

OATH OF EXAMINER.

UNITED STATES CIRCUIT COURT, DISTRICT OF MINNESOTA, THIRD DIVISION.

14

STATE OF MINNESOTA,

vs.

THE NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually. } C. Equity No. 791.

15

UNITED STATES OF AMERICA,
ss.
District of Minnesota.

I, Frederick G. Ingersoll, the duly appointed examiner in the above entitled cause, do solemnly swear that I will faithfully and fairly take and report the testimony to be adduced therein and make a just, true and correct report thereof
16 according to the best of my understanding and ability. So help me God.

FREDERICK G. INGERSOLL.

Subscribed and sworn to before me this 18th day of October, A. D. 1902.

(Notarial Seal.)

CONSTAN JENSEN,
Notary Public,
Ramsey County, Minnesota.

17

ORDER APPOINTING STENOGRAPHER.

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA.

18

STATE OF MINNESOTA,

vs.

THE NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually.

19

ORDER APPOINTING STENOGRAPHER.

Under and by virtue of the terms and conditions of that certain order made and entered in the above entitled cause by the Hon. William Lochren, Judge of said Court, and dated October 2, 1902, I hereby appoint Robert S. Taylor stenographer to take the testimony of the parties to this cause stenographically and thereafter put the same in typewriting under my direction. 20

FREDERICK G. INGERSOLL,
Special Examiner.

Dated St. Paul, November 8, 1902.

21 UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA.

STATE OF MINNESOTA,

vs.

THE NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually.

22 OATH OF STENOGRAPHER.

I, Robert S. Taylor, the duly appointed stenographer herein, do solemnly swear that I will fairly and faithfully report and transcribe the testimony to be adduced in this cause on behalf of the complainants and the defendants, according to the best of my understanding and ability. So help me God.

ROBT. S. TAYLOR.

Subscribed and sworn to before me this 8th day of November, A. D. 1902.

CONSTAN JENSEN,
Notary Public,
Ramsey County, Minnesota.

(Notarial Seal.)

Endorsed:

23 Filed December 30th, 1902.
Henry D. Lang, Clerk.

UNITED STATES OF AMERICA,
District of Minnesota, Set.
Third Division.

I, Henry D. Lang, Clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that I have carefully compared the foregoing paper writings, to-wit: Oath of Examiner, Order appointing Stenographer and Oath of Stenographer, with the originals thereof, which are
24 in my custody as such clerk, and that the said paper writings are correct copies of such originals and of the whole thereof, in the cause therein named.

Witness my hand as clerk and the seal of said court. Done at my office in St. Paul, Minnesota, this 30th day of December, A. D. 1902.

(Seal U. S. Circuit Court,
District of Minnesota,
Third Division.)

HENRY D. LANG,
Clerk.

UNITED STATES CIRCUIT COURT, DISTRICT OF MINNESOTA, THIRD DIVISION. 25

STATE OF MINNESOTA,

vs.

THE NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually. } C. Equity No. 791. 26

NOTICE OF TAKING TESTIMONY.

To the State of Minnesota, Complainant herein, and to Wallace B. Douglas, Attorney General of the State of Minnesota, George P. Wilson and M. D. Munn, Solicitors for said Complainant, to said Defendants and each of them, and to Messrs. Young & Lightner, M. D. Grover, C. W. Bunn and George B. Young, Solicitors for said respective defendants. 27

Gentlemen: PLEASE TAKE NOTICE that by an order of the United States Circuit Court, District of Minnesota, Third Division, made and filed at St. Paul in said District, on the 2nd day of October, 1902, I was appointed the Special Examiner in the above entitled cause, to take and report to the Court the testimony and evidence adduced or offered by the respective parties to said cause, both within and without the State of Minnesota. 28

You are hereby notified that, pursuant to request of the Complainant herein, I shall commence the taking of said testimony at the United States District Court room on the

third floor of the Federal Building in the City of St. Paul, State of Minnesota, on Wednesday, the twenty-ninth day of October, 1902, at ten o'clock in the forenoon of said day.

You are further notified that the same may be adjourned from time to time and to such place or places, at the direction of the Examiner, as may be convenient.

Respectfully,
FREDERICK G. INGERSOLL,
Special Examiner.

Dated St. Paul, Minnesota, October 18th, 1902.

Copies of the above notice have been mailed to the Solicitors for the respective parties herein, this 18th day of October, 1902, at the Post Office at St. Paul, Minnesota.

PROCEEDINGS BEFORE EXAMINER.

UNITED STATES CIRCUIT COURT, DISTRICT OF MINNESOTA, THIRD DIVISION.

STATE OF MINNESOTA,

vs.

THE NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually.

St. Paul, Minn., Oct. 29, 1902.

Pursuant to the notice by the Special Examiner herein duly served upon all the parties to this cause, the hearing

therein came on before the Examiner in the United States 32
District Court room on the third floor of the Federal Building in the City of St. Paul, Minnesota, the day and year above written, at 10 o'clock in the forenoon.

Wallace B. Douglas, Attorney General for the State of Minnesota, George P. Wilson and Marcus D. Munn appeared for and on behalf of said complainant. Messrs. Young & Lightner appeared for the defendant the Northern Securities Company; Mr. M. D. Grover appeared for the defendant the Great Northern Railway Company; Mr. C. W. Bunn appeared for the defendant the Northern Pacific Railway Company; 34
Mr. George B. Young appeared for the defendant James J. Hill, as president of the Northern Securities Company, and for Mr. Hill as an individual.

All parties to said cause being represented, the following proceedings were had:

The complainant thereupon presented to the Examiner the stipulation signed by all the parties to this cause, as follows:

STIPULATION FOR INTRODUCTION OF RECORD EVIDENCE.

35

UNITED STATES CIRCUIT COURT, DISTRICT OF MINNESOTA, THIRD DIVISION.

THE STATE OF MINNESOTA,

Plaintiff,

vs.

THE NORTHERN SECURITIES COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, 36
and Individually,

Defendants.

It is stipulated that either party may introduce in evidence the testimony of any witness that has been or may hereafter be taken or stipulated into the record in the suit

37 now pending between the United States and these defendant companies and others, subject to such objection as may at any time be made to the materiality or relevancy of such testimony or any part thereof. But when the testimony of any such witness is offered the whole of his deposition and the exhibits thereto, and not any part less than the whole thereof, must be offered.

Nothing herein shall prevent either party from examining additional witnesses or from further examining or cross-examining any witness whose testimony taken or stipulated
38 in said suit of the United States may have been introduced in this suit by either party under this stipulation.

W. B. DOUGLAS,
Attorney General.
M. D. MUNN.
GEO. P. WILSON,
Solicitors for Plaintiff.

Dated at St. Paul, October 29th, 1902.

YOUNG & LIGHTNER,
Solicitors for Northern Securities Company and J. J.
39 Hill.
C. W. BUNN,
Solicitor for Northern Pacific Railway Company.
M. D. GROVER,
For Great Northern Railway Company.

Thereupon, upon motion of the complainant and by consent of all parties, further proceedings in this cause before said Examiner were adjourned to Thursday, November 13, 1902, at 11 o'clock in the forenoon, Room 70 in the Post Office Building, in the City of New York, State of New York.

40

Room 70, Post Office Building, City of New York,
Thursday, November 13, 1902, 11 A. M.

On this day this cause was by said Examiner called for hearing pursuant to the adjournment heretofore had; and thereupon, by consent of all parties to this cause, further proceedings were adjourned until Monday, November 17, 1902, at 11 A. M. at this room.

Post Office Building, City of New York, 41
Monday, November 17, 1902, 11 A. M.

The hearing was resumed at 11 A. M. before the Examiner.

APPEARANCES:

Messrs. Marcus D. Munn and George P. Wilson on behalf of the complainant.

Messrs. M. D. Grover and Charles W. Bunn and George B. Young on behalf of the defendants. 42

Mr. Munn. Mr. Examiner, it having been already stipulated that either party to this controversy may offer certain testimony which has already been taken in the previous suit of the United States against these same defendants, which in turn was taken from the records of the suit of Peter Power against certain of these defendants, we now offer as a part of our record the following testimony, to be taken from the record of the case of the United States vs. The Northern Securities Company et al:

1. The testimony of James J. Hill, taken at the City of 43
Minneapolis during the first hearing in the Peter Power case, and from that record entered into the Federal case already referred to by me, with the exception, however, of the twelfth annual report of the Great Northern Railway Co., including, however, in his testimony the map which is attached to that report as a separate exhibit.

2. The testimony of Chas. S. Mellen, taken at the same time and place, excepting from the record of his testimony the by-laws of the Northern Pacific, unless you (Mr. Bunn) want those in:

Mr. Wilson. Of the Great Northern and Northern Pacific; 44
they both went in.

Mr. Munn. Gentlemen, do you wish to have those in?

Mr. Bunn. It is immaterial to us. If you desire them in the record, you can have them in.

Mr. Wilson. They were offered in pamphlet form.

Mr. Grover. Yes, I guess you had better put those in.

45 Mr. Munn. Then, at the request of the other side, the by-laws of the Northern Pacific may be considered as part of that testimony also.

Mr. Wilson. Now, I am not sure that they were offered in evidence.

Mr. Munn. Well, if they were not, they will not go in of course; and if they were offered in evidence, under the stipulation, they should go in if you so desire.

3. The testimony of Mr. W. P. Clough, as taken both in the City of New York and the City of St. Paul, Minnesota.

46 4. The testimony of Mr. J. S. Kennedy taken in the City of New York.

5. The testimony of Mr. G. W. Perkins taken in the City of New York.

6. The testimony of Mr. Charles Steele taken in the City of New York.

7. The testimony of Mr. J. P. Morgan taken in the City of New York.

We also offer in connection with the testimony of such witnesses the following exhibits.

The resolution of the Northern Pacific Railway Company
47 under date of November 13, 1901, retiring the preferred stock of that company.

Marked Complainant's Ex. 20.

The circular letter issued by the Northern Securities Company under date of November 22, 1901, to the stockholders of the Great Northern Railway Company.

Marked Complainant's Ex. 11.

A map prepared by the Interstate Commerce Commission and introduced in evidence in the government case as Ex. I.

Marked Complainant's Ex. 26.

48 Mr. Munn. This testimony is offered on behalf of the state in this case the same as though the witnesses were here, sworn and testimony taken.

It is agreed between the parties that the testimony which the State of Minnesota will offer showing its proprietary right to bring, or interest in, this suit, precede the testimony put in this day.

That is all the testimony we are ready to offer at this time. 49
We would like to have the case adjourned until to-morrow at which time we will call additional witnesses. We were late in getting into the city on Saturday and were unable to get our subpoenas out so as to be prepared to put our testimony in this morning.

The further taking of testimony was adjourned by the Examiner until the morning of Tuesday, November 18, 1902, at 11 o'clock.

50
Pursuant to the foregoing agreement, the following of the proceedings before the Examiner at St. Paul Dec. 11, 1902, is inserted here:

Mr. Wilson. Mr. Examiner, I now tender to be marked in their proper order and offered in evidence on the part of the complainant certain statements, 1, 2, 3 and 4, all of which are stipulated by the opposing counsel to be correct, except the last page of the fourth of these exhibits, which it will be necessary to rewrite, but we will not stop now to rewrite that page. The first of these exhibits shows the coun- 51
ties in the State of Minnesota north of a line drawn west from St. Paul, together with the population of those counties, respectively, as shown by the United States census for the year 1900. (This exhibit is subject to any corrections which it may be necessary to make in order to make it conform to the facts.) The second of these exhibits is a list of the state institutions of the State of Minnesota and their locations, respectively, upon the lines of railroads in this state. The third of these exhibits is a statement of the state institutions of the State of Minnesota located upon the lines of the Northern Pacific and of the Great Northern Railways, includ- 52
ing a statement of the number of inmates of the respective institutions and the amount of supplies purchased by the state for the support of those institutions, the amount of supplies shipped over the lines of the defendant roads to these several state institutions, and one or two other facts which appear in the certificate of the chairman of the Board

53 of Control. The fourth of these exhibits is a statement, first, of the amount of lands held and owned by the State of Minnesota; second, swamp land grants to certain railroads; the third statement of this exhibit will be rewritten and furnished to the Examiner.

The foregoing exhibits were marked Complainant's Exhibits 1, 2, 3 and 4, respectively.

Mr. Douglas. It is further stipulated that the above statements were compiled by the heads of the different departments certifying to them and that they reflect the exact con-
54 ditions existing at the time of the beginning of this action as well as at the present time, subject to correction wherever the same may be found to be erroneous.

Mr. Young. We admit that those statements are substantially correct.

Mr. Grover. The facts stipulated in those exhibits are substantially the same at the present time as when this suit was brought.

55

GEORGE A. FLINN, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION.

By Mr. Douglas:

Q. What is your full name, Mr. Flinn?

A. George A. Flinn.

Q. What is your employment?

56 A. State land clerk.

Q. In the office of the auditor of the State of Minnesota?

A. In the office of the auditor of the State of Minnesota.

Q. How long have you been so employed?

A. Eight years.

Q. Are you familiar with the records of the state with reference to the swamp lands as well as other lands owned by the State of Minnesota?

A. Yes, sir. 57

Q. Do you know the appraised value of these lands, reflected by the books of the state auditor's office, showing the appraised value of this class of lands, and, on the other hand, do you know their value from the standpoint of actual sales made or average sales made in this territory?

A. Yes.

Q. Will you please state the value of all the lands owned by the State of Minnesota known as swamp lands, state institution lands, or lands held from national grants and undisposed of?

A. The class of lands which come nearest to railroad lands, 58
as to location and quality, is probably school lands—that is, as to railroad lands which have been granted under what is known as congressional grants. The school lands consist of two sections in every township in the state, and they are fixed by law at numbers sixteen and thirty-six, regardless to the quality. So those would come the nearest to it, probably, of any other class of lands we have. The average sale price of these school lands, from the year 1862 to the year 1902, has been $6.24 per acre. Now, as to lands granted by the state to railroads, swamp lands, they would naturally be of an 59
inferior quality. They would all be swampy. They must be swampy. The state has not sold any of its swamp lands so that it would be very difficult to get at what their value is. They probably might be two dollars per acre less. But the state cannot sell them at less than $5 an acre.

Q. From your knowledge of the sales of lands in the immediate territory in which these swamp lands are located, what would you say is a fair estimate as to the value of the swamp lands, so-called, now and at the time of the beginning of this action owned by the state?

A. The present value now and at the time this action was 60
begun?

Q. Yes.

A. On the lines of the Great Northern and Northern Pacific. There is a very great difference. It would be well to separate them. On the Great Northern Railway, for instance (on the St. Vincent extension of it), swamp lands are worth probably $10 an acre. On the line of the Northern

61 Pacific they are worth very much less; you can buy them, I think, for $3.50 or $4 an acre.

Q. If the law permitted it?

A. Yes.

Q. Your general estimate as to the value of swamp lands owned by the State of Minnesota at the beginning of this action would be approximately $4.50 or $5 an acre, as an average?

A. Yes, sir.

Q. What is your opinion as to the value of the school lands
62 still owned by the state?

A. The average price of the school lands now would be, I should judge, not less than $8 per acre.

Q. What, in your judgment, is the average value of the state institution lands that are still held by the state, undisposed of?

A. That is a very broad question. Some of our state institution lands are in totally inaccessible places. Some are in St. Louis, Lake and Cook counties, some are in Itasca and Beltrami counties, and you could not determine their value.

Q. Of course it is bound to be general, but make as close
63 an estimate as it is possible for you to make.

A. I should think about $3 an acre.

Q. What proportion of these lands do you estimate, generally, as inaccessible to railroads?

A. Do you mean of the lands owned by the state?

Q. Yes.

A. At the present time?

Q. Yes.

A. I should think there would be fully two-thirds of them inaccessible to the railroads at the present time.

Q. And what do you mean by inaccessible?

64 A. I mean to say that they are remote from railroads; not less than 40 or 50 miles from a railroad.

Q. Where are the lands now owned by the state chiefly situated in the State of Minnesota?

A. They are situated in the north and eastern part, generally, in the counties of Itasca, Aitkin, St. Louis, Cook and Lake, and some in Beltrami county, but not very much.

Q. All, then, in the northern half of the State of Minne- 65
sota?

A. All in the northern half.

Q. What railroads traverse the northern half of the State of Minnesota?

A. I couldn't tell you. I know in a general way, but I couldn't state positively what railways do traverse the northern half of the State of Minnesota.

Q. I mean the systems.

A. The systems?

Q. Yes. Limited to what systems of railway?

A. I understand there is the Eastern Railway of Minnesota, 66
which is part of the Great Northern system.

Q. Yes.

A. Runs across from Duluth to the eastern boundary of the state, and the Northern Pacific runs from Duluth through Aitkin county and westward.

Q. And the Great Northern?

A. The Great Northern—that is, the Eastern Railway of Minnesota I am referring to. I understand that is part of the Great Northern system.

Q. From what point near St. Cloud tending towards St. 67
Paul and Minneapolis?

A. I think the Canadian & Northern road comes down also. That touches the northwestern part of the state. It comes down from the Lake of the Woods.

Q. Just clips the northern edge of the state for a few miles along the Lake of the Woods?

A. Yes, sir.

Q. Speaking generally, outside of the ore-carrying roads in St. Louis county, which are not to exceed in total 300 miles in length, are there more than two systems of railway 68
in the northern part of the state, and are not those two systems confined to the Northern Pacific and the Great Northern?

A. I couldn't say.

Q. I think that is undisputed. Will you state whether or not the fact that a large percentage of the lands owned by

69 the State of Minnesota, or other lands coming within your knowledge, are reached by or tributary to competing lines of railway in the State of Minnesota, forms an ingredient in fixing their value or affects their value?

Mr. Young. That is objected to as incompetent in itself, and it does not appear that the witness is qualified to judge of the value of lands in any way.

A. I could not answer as to that part of it relating to lands tributary to competing lines of railway. I know that proximity to a railroad does materially affect the value of land, 70 enhances it, naturally.

Q. State whether or not in your judgment proximity to competing lines of railway affects the market value of lands.

Same objection by defendants.

A. Proximity to competing lines of railway would affect the value just as would proximity to a line of railroad that was not competing.

Q. Does the proximity to competing lines of railway as distinguished from proximity to a single line increase or operate to decrease, in your judgment, the value of lands?

Same objection by defendants.

71 A. In a general way, the more railways they have, the better it is for the price of the land.

Q. State whether this is the result of your observation based upon sales of lands owned by the State of Minnesota, and also generally within your knowledge.

A. It is.

Q. I think you stated you have been in charge of the sales of lands owned by the State of Minnesota for a number of years?

A. Yes, eight years.

Q. And you are the head of that department of the state 72 auditor's office?

A. I am chief clerk of the office.

Q. For two years prior to January 1, 1902, what was the average price of the lands sold by the state?

(Witness refers to papers.)

A. The average price was very much higher for the past two years, on account of the land boom. The average price

for school lands sold by the State of Minnesota for the year 1901 was $5.76, and for the year 1902 it was $9.78, according to statements prepared in the state auditor's office. 73

Q. These statements were prepared under your supervision?

A. Yes.

Q. And partly by you, were they not?

A. Yes, sir.

Q. The sales have been limited to school lands, have they, or have they included state institution lands?

A. They have included a small amount of state institution lands. 74

Q. What do you find with reference to the sale price of state institution lands during the same period?

A. The average price of state institution lands for the year 1901 was $5.17, and for the year 1902 $7.12, per acre.

Q. Has there been a general increase of values as to occupied and unoccupied lands in the State of Minnesota during the past two years?

A. A large increase.

Q. That is, without regard to special locations, too, is it not? 75

A. Yes, it is general.

CROSS-EXAMINATION.

By Mr. Young:

Q. Along what railroads were most of the school lands situated that were sold in 1901?

A. They were sold along the line of the Great Northern and the Northern Pacific railways.

Q. Along what roads were your principal sales of school lands in 1902? 76

A. Along the same lines of railroads.

Q. And how about state institution lands?

A. The same lines of railroads, sir.

Q. Have you ever been up in this northern country, northern and eastern part of the state, where you say most of the unsold school and swamp lands are situated?

77 A. I have been up in some parts of it; not all through it.

Q. Been through it generally?

A. No; we have cruisers who do that.

Q. Personally you don't know anything about it?

A. No.

Q. You say that these swamp lands in the Red River valley were worth ten dollars an acre. Were you ever concerned in the sale of any swamp lands in the Red River valley?

A. Yes.

Q. At $10 an acre?

78 A. Yes; more than that.

Q. Was that the average price of swamp lands in the Red River valley?

A. That was the average price of the lands we sold. Let me see if I have a statement of that by counties. (Referring to papers.) In the year 1902 we sold state institution lands, which are swamp lands set apart for the benefit of state institutions, in the county of Clay at $9.70 per acre. That was the average price for that year.

Q. That was in 1902?

A. 1902. That was the sale held in the fall of 1901, which
79 is included in our fiscal year of 1902. In Kittson county our average sale price was $9.05. It was lower in other counties.

Q. How was it in 1901 in those counties?

A. I have got those statements here, I think. We didn't sell in those counties in that year. We only sold in eastern counties.

Q. That was something over the average price for 1902?

A. Yes, that was over. They are very desirable sometimes, once in awhile—our swamp lands—for meadow purposes.

Q. Those that have iron ore in them are especially so, I
80 suppose?

A. Yes, more so. They use those for grazing.

Q. Those sales of school lands and state institution lands, are they made for cash or on time?

A. On long-time payments; 40 years' time.

Q. And at what rate of interest?

A. Four per cent.

Q. And these prices are for sales on 40 years' time and at 4 per cent interest? 81

A. Yes.

Q. And these values that you have given are values based on such terms, on time sales of that length?

A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Munn:

Q. These sales you have referred to were sales for the year 1901? 82

A. Yes.

Q. And they appear in the report for 1902?

A. Yes, sir.

Mr. Young. December, 1901?

Witness. The sales of 1901, which are included in the fiscal year of 1902.

Q. So all these sales regarding which you have testified were made during the year 1901?

A. Up to July 31, 1902.

GEORGE A. FLINN.

Subscribed and sworn to before me this 13th day of December, 1902. 83

FREDERICK G. INGERSOLL,
Special Examiner.

GEORGE D. ROGERS, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION. 84

By Mr. Wilson:

Q. Colonel, you may give your full name.

A. George D. Rogers.

Q. You reside in Minneapolis?

A. I do.

Q. And have for how many years?

A. Twenty-five years.

85 Q. Have you any official connection at the present time with the Chamber of Commerce of the City of Minneapolis?

A. I am the secretary.

Q. How long have you been secretary of the Chamber, Colonel?

A. About eleven years.

Q. Consecutively?

A. Nearly ten years consecutively; one year before.

Q. In a general way, Colonel, what are your official duties as such secretary of the Chamber of Commerce of Minneapolis?

86 A. To keep all books, records, take care of papers and property, and the general executive officer of the association.

Q. Do you keep an official record of the receipts of grain and flax-seed received at the city of Minneapolis?

A. I do.

Q. You are also connected with and have charge of the publication of what is known as the market record in the city of Minneapolis?

A. I have charge of it.

Q. Is that run under the auspices of the Chamber of Com-

87 merce, or is it a distinct institution?

A. It is distinct.

Q. Your official records show not only the receipts of grain and flax-seed at Minneapolis, but also the shipments of grain and flax-seed out of the city, do they not?

A. They contain both the receipts and shipments of grain and flax-seed—in and out.

Q. State whether you keep a record of the receipts at Minneapolis over the different railroads centering in the city of Minneapolis.

A. We have records of each road separately.

88 Q. In getting at the receipts of the different roads or the receipts over the different roads, you may state how you get that information.

A. We have a paid clerk in each of the railroad offices. He is the clerk of the railroad companies, but we pay him for preparing for the Chamber of Commerce a statement on blanks which we furnish. He prepares the statement every morning of the previous day's receipts, and we send an agent

around to the railroad freight stations and gather these re- 89
ceipts every morning, and they are compiled in our office.

Q. In your records, as part of your records?

A. Part of our records.

Q. Is that true also of shipments out, Colonel?

A. It is.

Q. Colonel Rogers, I will now show you Complainant's Ex. 5, purporting to show the total grain and flax receipts in Minneapolis for five years, of all kinds of grain, to-wit, for the years 1897, 1898, 1899, 1900 and 1901, and also the receipts over the Great Northern Railway, and the receipts at Minneapolis over the Northern Pacific Railway, and 90
also showing the production of wheat and other cereals in the State of Minnesota for those years, and I will ask you to state whether that statement or those statements were compiled by you from the official records in the office of the Secretary of the Chamber of Commerce in the city of Minneapolis.

A. They are.

Q. Are those statements substantially correct as shown by the records of the Chamber of Commerce of the city of Minneapolis?

91

A. They are.

Q. You may state whether those records are carefully compiled, carefully and accurately compiled and placed upon the records of the Chamber?

A. They are compiled with great care and accuracy.

Q. Now, that would apply particularly to the first page, Colonel. Please turn to the second page showing the production in the State of Minnesota and also the States of North and South Dakota, I think. State how you arrived at that data.

A. This production in all the years mentioned here up to 92
1901 is obtained from the reports of the Agricultural Department at Washington. They are compiled in our records, and this statement is from our records.

Q. Transferred from the reports of the Agricultural Department to your records?

A. To our records.

Q. As the same appear from time to time, I suppose?

A. Yes, sir.

93 Q. How about the year 1901?

A. The Agricultural Department at Washington was very late that year in getting out its report, and in place of taking the Agricultural Department's report we took the ordinary commercial report for 1901.

Q. That is estimated, then?

A. That is estimated.

Q. For 1901?

A. I later saw the Agricultural Department's report. It varied in some instances, but not very materially, from the commercial report.

94 Q. The statement which you hold in your hands shows the receipts and shipment of grain during those years at the city of Minneapolis?

A. This only shows the receipts, I believe.

Q. Just the receipts; it doesn't show the shipments?

A. No, sir.

Q. I suppose, Colonel Rogers, you have no record and it is impossible to say what proportion of those receipts in the different years was of grain produced in the State of Minnesota or in North or South Dakota, as the case may be; you have no way of dividing it?

95 A. We do not keep any record of division.

Q. You keep no record of division?

A. No, sir; not division by states.

Q. Would the receipts cover the production of any other states except the states of Minnesota, North and South Dakota?

A. They do to some extent.

Q. They do to some extent?

A. Yes, sir.

Q. To any material extent?

96 A. Sometimes a good deal of grain comes in over the roads from the Southwest, that is produced in Nebraska, and some in Northern Iowa.

Q. That, I suppose, when compared with the aggregate is comparatively small, is it not?

A. Yes, quite light.

Q. Taking the five consecutive years, what proportion of the grain and flax-seed received at Minneapolis was carried

into that city over the defendants' roads, the Northern Pacific 97
and the Great Northern?

A. 29½ per cent.

Mr. Douglas. Is that of the two roads?

Witness. Two roads.

Q. That includes the two roads?

A. Yes, sir, for five years.

Q. That is the average for five years?

A. That is the average for five years.

Q. Five consecutive years?

A. Yes, sir.

Q. You are also somewhat acquainted with the conditions 98
at Duluth, are you not?

A. Well, only in a general way.

Q. What was the total of the number of bushels of grain brought into the city of Minneapolis during those five consecutive years?

A. Between 546,000,000 and 547,000,000 bushels. Shall I state the exact figures?

Q. Give the exact figures.

A. 546,359,100 bushels.

Q. Now, of that number of bushels what number did the 99
Great Northern and the Northern Pacific, respectively, bring into the city of Minneapolis?

A. 29½ per cent.

Q. Well, can't you state the number of bushels, Colonel?

A. 161,909,550 bushels.

Q. By what road?

A. By the Great Northern and the Northern Pacific.

Q. Now, what part of that was carried by the Great Northern and what part of it was carried by the Northern Pacific?

A. By the Great Northern 140,305,440 bushels, and by the Northern Pacific 21,604,110 bushels.

100

Mr. Munn. Judge Young, have you any objection to this statement going onto the record subject to your objection that it is immaterial?

Judge Young. I should object to it as immaterial and incompetent.

Q. You have given the average for the five consecutive years. Can you state the total amount of grain and flax-seed —you distinguish between other cereals and flax-seed?

101 A. Oh, yes, they are distinguished here.

Q. Now, state the total for the year 1901 of all kinds of grain and flax-seed.

A. That is, by all roads?

Q. Yes, sir.

A. The receipts by all roads in the year 1901 were 122,697,340 bushels.

Q. And over the Great Northern road what number of bushels?

A. Over the Great Northern road 30,455,550 bushels.

102 Q. Is that correct, Colonel—30 millions—or does that include the flax?

A. That is wheat. You want the total of all?

Q. Yes.

A. The total of all was 36,715,600 bushels.

Q. And what number of bushels over the Northern Pacific road in that year?

A. Of all grains and flax-seed?

Q. Yes, sir.

A. 5,719,390.

Q. Making a total over both roads of how many bushels?

103 A. I think they are not totaled here.

Q. They are totaled on the statement you furnished me. (Handing witness paper.)

A. 42,434,990 bushels.

Q. Showing what percentage of the entire crop was brought in over those two roads in that year?

A. 34½ per cent.

CROSS-EXAMINATION.

By Mr. Young:

104 Q. Colonel, you have been testifying to figures as to quantities of grain (of one kind and another) shipped in and out of Minneapolis in the last four or five years, and what proportion was carried in or out by the Great Northern and what proportion by the Northern Pacific. Those statements of yours were made up from this paper (Complainant's Ex. 5), were they not?

A. Yes.

Q. Aside from this paper I presume you could not give those figures?

A. I prepared the paper from my records. 105

Q. But you make the statement now from this paper, and the paper that you prepared from the records, and the records were made up in the manner you have testified?

A. Yes.

Q. From information received from a clerk whom you employed and paid for that purpose, in the railroad offices?

A. Yes, sir.

Q. And as to the other matters—matters of production—you state that they are copies from the reports of the Department of Agriculture or from what you call the commercial estimate? 106

A. Yes.

Q. And of course you have no personal knowledge whatever in regard to the receipts and shipments; you merely know from what is furnished you by the clerk who is employed for that purpose?

A. That is all.

Mr. Young. The defendants move to strike out the testimony as to the figures given by this witness on the ground that the same are mere hearsay.

Mr. Wilson. The complainant offers in evidence Complainant's Ex. 5, so designated by the examiner. 107

Mr. Young. The whole of the exhibit is objected to as immaterial, incompetent, as not the best evidence, as merely hearsay and secondary evidence, for which no foundation has been laid.

G. D. ROGERS.

Subscribed and sworn to before me this 12th day of December, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

108

S. A. KEMP, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

By Mr. Wilson:

Q. Please state your full name.

A. S. A. Kemp.

Q. You reside at Duluth?

109 A. I do, sir.

Q. And you are the secretary of the Board of Trade of the city of Duluth, are you not?

A. Yes, sir.

Q. And have been for how long, Mr. Kemp?

A. Four years.

Q. The Board of Trade of the city of Duluth and you, as its secretary, keep a record of the receipts at Duluth of grain and flax, and also a record of the shipments out of the city of Duluth of grain and flax, do you not?

A. Yes, sir.

110 Q. That is a part of your official duty as secretary of the Board, is it not?

A. Yes, sir.

Q. —to keep those records?

A. Yes, sir, it is.

Q. And they are compiled from what data, Mr. Kemp?

A. They are compiled from the records that are furnished us by the inspection and weighing department of the state.

Q. And those records are kept officially by that department of this state, are they not? They are required to keep those

111 records?

A. Yes, sir.

Q. You may state whether they have an inspection and weighing department in Superior or West Superior on the western side of the bay, or whether the inspection in Superior and West Superior is made under the rules and regulations of the Minnesota Grain Inspection department.

A. Yes, sir, it is.

Q. What is the fact in regard to that?

A. The Minnesota department, or the Minnesota state weighing department, has supervision over both sides of the

112 bay.

Q. And you may state whether your records that you keep as secretary of the Board of Trade at Duluth comprehend the receipts and shipments from Superior as well as from the city of Duluth?

A. Yes, sir, they comprehend all the receipts.

Q. What is that?

A. They comprehend all the receipts on both sides.

Q. You may state whether those records are, or are not, 113
made up by you as secretary and compiled with accuracy and care, or otherwise.

A. Yes, sir; we take great care with the records that are given us to see that no mistakes are made.

Q. You believe the records as so kept by you are substantially correct?

A. I do, sir.

Q. Now, have you prepared, at our request, a statement covering the receipts of grain and flax-seed at Duluth and Superior over all the railroads from 1897 to 1901, inclusive, and also a statement of the shipments of grain and flax-seed 114
from Duluth and Superior for the same years, and the amount of grain received at Duluth and Superior over the Great Northern Railway and the Northern Pacific Railway, and the percentage of grain of all kinds carried by those two roads out of the total of the receipts at the head of the lake during the years referred to, 1897 to 1901, inclusive? I say have you prepared such a statement?

A. Yes, sir.

Q. Witness is now shown Complainant's Ex. 6, and asked if that is the statement that he has prepared at our request 115
and certified to.

A. This is the statement which I prepared, yes, sir.

Q. Is that statement a correct transcript of the records of your office covering those particular items?

A. Yes, sir, it is.

Q. And is that statement, to the best of your knowledge and belief, substantially accurate?

A. Yes, sir.

Q. You may state the total amount of grain and flax-seed received at the head of the lake, including Duluth and West Superior, during the five years referred to in the statement. 116

Mr. Young. I object to the question because it calls for an answer to be given by reading the statement which the witness holds in his hand, and that such evidence is incompetent, not the best evidence.

Mr. Wilson. I mean as shown by your official records. Make your statement.

A. The total number of bushels received during the five years was 351,566,896.

117 Q. And the total of the shipments out during the same period of time?

A. 309,745,774 bushels.

Q. Now, turning to the last page (I think it is) of the statement, Mr. Kemp, what proportion of the receipts at the head of the lake of grain and flax-seed, during those five years, was carried into Duluth and West Superior over the Great Northern and what proportion was carried over the Northern Pacific, as shown by your official records?

The defendants noted the same objection.

118 A. Over the Great Northern road 207,320,792 bushels; over the Northern Pacific road 99,459,330 bushels.

Q. What percentage of the total did the Great Northern carry and what percentage of the total did the Northern Pacific carry, of that aggregate amount of the five years?

Same objection by defendants.

A. About 59 per cent over the Great Northern and 28 per cent over the Northern Pacific.

Q. Leaving what per cent brought in by other roads?

A. About 13 per cent.

Q. You have no way of telling; have no record, I suppose,
119 what proportion of that total was brought in from the state of Minnesota or from North Dakota or South Dakota, or elsewhere, as the case might be?

A. No, sir, we have no way of knowing.

Q. No way of arriving at that?

A. No, sir.

Q. Independent of the records, you know from personal observation that during the period of your incumbency as secretary of the Chamber of Commerce, there has been received at the head of the lake over the two roads of the Northern Pacific and the Great Northern very large quantities of wheat
120 and other grain, do you not?

A. Yes, sir.

Q. You know that from your own personal observation?

A. Yes, sir.

Q. Running up approximately to about how many bushels, or can't you give that?

A. No, I couldn't begin to.

Q. Well, you know it to be a great many million of bushels of wheat, do you not, Mr. Kemp?

A. Yes, sir. 121

Q. Brought in there over those two lines of road during the five years, 1897 to 1901?

A. Yes, sir.

Q. Would that aggregate amount exceed one or two hundred million of bushels, during the five years? You have stated from your records the total amount. Now, I say from your personal observation and knowledge during this period of time, has there been brought in over those two roads to exceed say 200,000,000 bushels of wheat and other cereals, including flax?

A. For the five years? 122

Q. Yes.

A. Yes, sir. I should think all of that.

Q. Now, you may state whether the wheat and other cereals, including flax-seed, grown in the northern portion of the state of Minnesota, is or is not tributary to Duluth and, as a rule, comes to the Duluth and West Superior market.

A. Yes, that is a fact. The grain that comes in there is very largely tributary to the northern part of Minnesota and state of North Dakota. Very little of it comes from other sections.

Q. Are you able to state whether the larger proportion of 123
your receipts there is wheat and grain grown in the state of Minnesota or in North Dakota? That is, relatively what proportion of your receipts there is Minnesota production and what proportion, if any, is North Dakota production or South Dakota production?

A. It would be difficult for me to form an opinion.

Examined by Mr. Douglas:

Q. State from your general knowledge the relative proportions, approximately.

A. My opinion is that there is not a great deal of difference 124
between the two states.

Q. That is, Minnesota as against North and South Dakota?

A. Yes.

Q. In other words, Minnesota raises, approximately, as much as North and South Dakota, which is tributary to the Duluth market?

A. Yes.

125 Q. You know that hundreds of millions of bushels of wheat and other grains, tributary to the Duluth market, raised in the state of Minnesota, are annually shipped, and have been shipped during the period to which your attention has been called, to Duluth over the lines of the Great Northern and Northern Pacific railways?

Mr. Young. That is objected to as being somewhat leading.

Witness. That is a pretty leading question.

Mr. Douglas. Of course the witness is not the judge of that. I am only summarizing, that is all.

126 Q. Do you know of your personal knowledge that a large mass of grain raised in Minnesota has been shipped over the lines of the Northern Pacific and the Great Northern railways to the Duluth market during the past five years?

A. Well, my opinion of the matter is that the larger part of the product of the state of Minnesota goes to Minneapolis.

Q. Yes, but a large mass goes to Duluth, does it not?

A. Well, quite a large part of it.

Q. And during a period of five or six or seven years that runs into millions of bushels, does it not?

127 A. I should think it would probably be all of a million or a million and a half.

Mr. Munn. Do you mean a million and a half bushels during a period of five years?

Witness. I mean a hundred millions. Our total receipts during that time was 351 millions. I could not form any opinion as to how much of that is Minnesota-grown, and how much is Dakota-grown.

Q. But you feel quite certain, from your own personal knowledge and observation, that upwards of 100 millions or 150 millions is raised in Minnesota?

128 A. Yes.

Q. Have you personal knowledge of the fact that Minnesota produces a large mass of grain?

A. Yes.

Q. And substantially all grain raised in Minnesota, tributary to the Duluth market, is brought by the Northern Pacific and the Great Northern lines of railway?

A. Yes, sir.

Q. Are there any other lines of railway in Minnesota that 129
carry grain to Duluth at all?

A. Very little of it.

Q. Are there any?

Mr. Wilson. 13 per cent of it comes in there by other roads, that is all.

Witness. Some of that was tributary to the Soo line. They deliver to them somewhere down in the southern part of the territory there and come up to Duluth.

Q. After being delivered to the Soo line, that line would deliver it to the Northern Pacific or Great Northern?

A. Yes. 130

Q. For trans-shipment to Duluth?

A. Yes.

Q. So that, as a matter of fact, while it may have originated on the Soo line, it must of necessity be shipped over the Northern Pacific or the Great Northern?

A. That is true. There is very little of that grain comes that way—very little of it.

By Mr. Munn:

Q. Of your own knowledge, approximately how much grain comes to the city of Duluth annually—of all cereals? 131

Witness refers to papers in his hands.

Mr. Munn. I don't care about your sheet data. But you live there, do you not?

A. Yes. About 50 millions.

Q. That you know from your own personal observation?

A. Yes.

Q. As a resident of the city of Duluth and your official connections?

A. Yes, sir.

By Mr. Douglas:

Q. What lines of railway passing into Duluth cross the 132
state of Minnesota? Please name them all.

A. The Great Northern road and the Northern Pacific road.

Q. They are the only ones?

A. Yes, sir, they are the only ones.

Q. I believe that the two Iron Range roads run up into St. Louis county, a distance of not to exceed 150 miles each?

133 A. Yes.

Q. They are tributary to Duluth?

A. Yes.

Q. They are not grain-carrying roads at all?

A. Not at all.

Q. They don't carry a bushel of grain, do they?

A. No, sir.

Q. And never have?

A. No sir, not yet.

Q. Aside from those two ore-carrying roads, the Great
134 Northern and the Northern Pacifice railway companies are the only railway companies running into Duluth from across the state of Minnesota?

A. Yes, sir.

CROSS-EXAMINATION.

By Mr. Young:

Q. The Northwestern Railway Company has a line from St. Paul to Duluth, has it not?

A. Yes, sir, they have a line into Duluth.

135 Q. And that connects with their entire system of railroads?

A. Yes, it has a connection with the whole system.

Q. Does not the Milwaukee & St. Paul also run its trains into Duluth, over the old St. Paul & Duluth road?

A. I am told that they do, although I don't know.

Q. What is your understanding of it?

A. My understanding is that they bring grain into Duluth over the Northern Pacific. They deliver to the Northern Pacific and it is received as coming from the Northern Pacific.

Q. Isn't it the fact that they run their own trains over the
136 Northern Pacific into Duluth?

A. Not as I know.

Q. You don't know.

A. No.

Q. If it is the fact that they do and you have got those on your record as having been delivered to the Northern Pacific, then your records are wrong?

A. I don't—

Q. If it is the fact that the Milwaukee brings that into Duluth on its own trains over the Northern Pacific road and if your records have that as something which was brought by the Milwaukee and delivered to the Northern Pacific and brought by the Northern Pacific to Duluth, then of course your records would be wrong? 137

A. It is inspected as coming over the Northern Pacific road, sir.

Q. Then, you merely know as to how it is inspected? You don't know the fact in regard to any bushel of wheat, over what road it came into Duluth? You merely know what you have been furnished from the State Inspector's office? 138

A. It is credited to the Northern Pacific instead of the Milwaukee.

Q. And your records simply contain what you got from the inspection?

A. Yes, sir.

Q. And without anything from your personal knowledge?

A. Yes, sir.

Q. Now, do you personally make up those records, or do you leave it to your clerks?

A. Yes, sir. 139

Q. Which—you or your clerk?

A. Well, we both work at it.

Q. Who made up this copy that you have here?

A. I made this myself.

Q. You made this up, and you made it from your records?

A. Yes, sir.

Q. Now, you have stated fully, I believe, as to the sources of information from these records; that is to say, that in the main they are from the inspector's reports or records (referring to papers in the hands of the witness), and all the answers which you have given on the witness stand here as to specific quantities have been given from the papers in this exhibit No. 6, have they not? 140

A. Yes, sir.

Q. Now, you were asked whether of your own knowledge—and the question was repeated in several forms—there had not been 200,000,000 of bushels, or very large quantities, of wheat brought into Duluth. Now, you have never sat down

141 to figure up, have you, except from these records, what quantities of wheat had been brought in?

A. Yes, I have figured up.

Q. From these records of yours?

A. From our records, yes.

Q. But I mean from other sources; for instance, you say that there has been brought in over one hundred and fifty millions of bushels of wheat. Now, do you mean to say that you have observed quantities of wheat coming in from time to time and have known or found out what those were and then have added up those totals so as to be able to say there
142 are over one hundred and fifty millions of bushels of wheat? You haven't done that, have you?

A. Well, that is only an opinion of how much might have come from the state of Minnesota.

Q. Exactly. That is what I am trying to get at. You were asked to state as to your own knowledge, and I want to know how much of that was your knowledge and how much was sort of a guess or an opinion founded on your records and not on your personal observation. Now, how much of that opinion that you gave was founded on personal observation
143 of wheat coming in or going out of Duluth, and how much on these records of yours?

A. I don't know just how we could arrive at the amount of grain coming from the state of Minnesota alone. It is a fact that it has been figured out at different times in our office, but the result would be merely an opinion of how much that grain was Minnesota grain and how much was Dakota grain.

Q. Exactly. Now, what I was especially getting at was this. Of course so far as your testifying and giving an opinion as to these records, whether your opinion is correct
144 or not (very likely it may be), why, that depends on the correctness of your records. In other words, when you make that statement of your opinion you are adding nothing to what this statement shows. But you are also asked whether, laying your records aside, not referring to them at all, you can state the amount of wheat which had been brought into Duluth during the last five years, or, rather, whether that amount did not exceed 100 millions or 150 millions of bushels,

and you have testified as if of your own knowledge and obser- 145
vation that the quantity brought in did exceed these enormous figures. Now, what I am getting at is this: When you state that, how is it that you know there were such large quantities? Is it from seeing the wheat coming in and going out, or what?

A. No, that was based on reports which had been received from the country as to the amount shipped. We have made a practice of getting a report from the different shippers during the season. Now, we have never kept those reports compiled, but we would occasionally hold them until we had 146
formed an estimate of about how much wheat had been received from Minnesota. That is all my opinion has been founded upon.

Q. So that in forming your opinion as to these quantities, it is really based on statements which have been furnished to you, of one kind or another, from different sources, and not from what we might call personal knowledge.

A. Oh, I have no personal knowledge in regard to it at all.

Q. Of course you have personal knowledge as to what is in your record—that is, that it is in the record.

A. Yes. 147

Q. And you have personal knowledge as to whether or not this paper is a correct copy of the record?

A. Yes.

Q. But as to the matters which got into the record, as for instance, that yesterday there were twenty carloads of wheat came in over the Great Northern, or two or three thousand bushels of wheat, you don't know anything about except what you get from the clerk who furnishes you that account of it? That is so, is it not? You don't go and see those cars and see how much wheat there is in them, but you get this return which is made to you by the railroad inspection? 148

A. If you will just let me correct you there. For instance, we get the total number of cars that have been received during a certain day.

Q. Whom do you get that from?

A. Get that from the state inspection. They inspect a certain number of cars that arrive in the yard during that day. Now, we know exactly what those cars contain, from the

149 weighing in the different elevators and mills into which those cars are unloaded. So we have as against the number of cars the total amount of grain that has been received that day.

Q. Where do you get the information as to the quantity in each car and its weight, etc.? You don't weigh it yourself, do you?

A. Now, understand me. They don't report to me the quantity in each car, but they report the total quantity received, and the different elevators and mills into which they have unloaded the cars during that day.

150 Q. Who makes these reports to you?

A. The elevators and the mills.

Q. So that your records, then, are made up from what you get from the inspection department and also the returns which you receive from the mills and the elevators?

A. Yes, sir.

Q. And of course the correctness of your records depends entirely upon the correctness of those returns?

A. Yes, sir.

Q. If those returns are correct and have been copied correctly into your records, your records are correct?

151 A. Yes, sir.

Q. If those returns are incorrect in any case, why, to that extent your records would be incorrect—to the extent that your information is incorrect? That is so, is it not?

A. Well, we don't—

Q. You don't like to admit that they are incorrect?

A. No.

Q. But if the returns made to you were incorrect, why, your record made up on that return would be incorrect, too, would it not?

A. Well, it is a pretty hard thing to acknowledge they are

152 incorrect.

Q. I am not asking you to acknowledge they are incorrect. But I say if the elevator or mill gives you an incorrect statement and you make up your record based on that statement, then of course your record would be erroneous?

A. Oh, there is no question about that.

Examined by Mr. Munn:

Q. Mr. Kemp, you have lived in Duluth how long?

A. I have been there about sixteen years. 153

Q. Have you been engaged in work similar to this for the past ten years?

A. Well, I was engaged in railway service before I entered upon this work.

Q. What railway were you working for?

A. Both the Omaha road and the Great Northern.

Q. How long did you work for the Great Northern?

A. About five years.

Q. What time did that cover?

A. I think from 1892 to 1897.

Q. During that time did you see the cars coming in there 154 by the thousands loaded with grain?

A. Oh, yes, sir.

Q. Over that road?

A. Yes, sir.

Q. And you had occasion to observe the elevators there in Duluth?

A. No, I didn't have much occasion to—

Q. I mean since you left the railway service.

A. Yes, I have seen them.

Q. How many elevators have you got there? 155

A. I think there are about fourteen or fifteen.

Q. What is their total capacity, approximately?

A. About 34 millions.

Q. Did you have occasion to observe whether they were filled or empty during different times in the year?

A. No, I didn't have any occasion to.

Q. Have you had occasion to observe the number of cars coming in there—not the exact number, but as to whether there were a large number—over the Great Northern and the Northern Pacific?

A. Well, it would depend on the receipts over the roads. 156

Q. I say have you had occasion to observe the trains coming in there?

A. Yes, sir.

Q. Have you seen thousands of cars over both the Great Northern and the Northern Pacific coming in there?

A. I don't think I have seen thousands of cars.

157 Q. I don't mean at any one time, but I mean along during the year.

A. Yes.

Q. You have seen that yourself?

A. Yes, sir.

Q. So that you know a great many thousands of cars come in over the Great Northern and Northern Pacific, loaded with grain, during the year.

Objected to by defendants.

A. I have seen that, yes, sir.

158 Q. You have seen that, of your own observation?

A. Yes.

Q. You have traveled through the state some also, have you not?

A. Yes, sir.

Q. Have you observed trainloads of grain on the Great Northern and Northern Pacific headed for Duluth?

A. Yes, sir.

Q. So that you know of your own knowledge that they bring in there thousands of cars of grain during the year?

A. Yes, sir.

159 Q. Regardless of any record?

A. Yes, sir.

Q. Now, these records that you make up are made up in the manner you suggested, but when you testify to your observation you testify regardless of these records?

A. Well, let me see what—

Q. I say when you testify that you have seen these cars of grain coming in there, you don't refer to your records at all?

A. Oh, no.

Q. That is your own knowledge?

A. Yes, sir.

160 Q. State whether or not, while you were working for the Great Northern Railway Company you saw any cars coming in over the Northern Pacific to Duluth.

A. Yes, sir, I saw a number of cars.

Q. Well, what do you mean by "a number of cars?"

A. A number of trainloads.

Q. A number of trainloads?

A. Yes, sir.

Q. Would it run up into thousands of cars? 161

A. It would, yes.

By Mr. Douglas:

Q. Do you know as a fact that the Milwaukee road has not a line of railway into the city of Duluth, from your general knowledge?

A. Yes, sir.

Q. They have not a line?

A. No, sir.

Q. You have stated that the Omaha has a line into Duluth. I will ask you from whence that railroad comes, what state? 162

A. From Minnesota and Wisconsin.

Q. It comes in from Wisconsin, does it not?

A. Yes, sir.

Q. To Superior, and then simply crosses the bay into Duluth?

A. Yes, sir.

Q. So that its only connection with Duluth is crossing the bay itself into the city from the state of Wisconsin?

A. Yes, sir.

163

By Mr. Young:

Q. You say that the inspection for Duluth and Superior is all under the supervision of the Minnesota commission. Now, I see here that this exhibit 6 shows Receipts of Grain and Flax-seed over all railroads at Duluth and Superior.

A. Yes, sir.

Q. And these figures that you have got through here include Superior as well as Duluth?

A. Yes, sir.

Q. And you don't undertake to show how much of it is Duluth and how much Superior? 164

A. No, sir.

Q. For anything in this record, ninety per cent of it might be Superior and ten per cent of it Duluth, so far as this discriminates between them? That is so, isn't it? I don't mean to say that such is the fact; but, as far as anything disclosed in this record is concerned, the proportions might be one-half or a quarter or three-quarters, or any of them?

165 A. Yes.

Q. Now, you say you have seen thousands and thousands of cars loaded with wheat. Well, of course in any particular car you didn't know whether it was loaded with wheat or not? You didn't look inside of it to see.

A. Very largely the cars would be inspected after they would pass me by there, and they would all have inspection cards on them.

Q. But some of them might not have had, I suppose?

A. Yes.

166 Q. In fact, when you say you have seen thousands and thousands of cars, you mean you have seen a great many cars loaded with wheat coming into Duluth, but as to any particular number of thousands, you could not form any opinion at all?

A. Oh, no.

Q. You have never undertaken to make notes and add them up, have you, at that point?

A. Part of these years the Great Northern road delivered its cars to the St. Paul & Duluth and they brought them in from Hinckley and piled them up in one end of the yard
167 there. Used to have about a thousand cars at a time on the track.

Q. That was about seven or eight years ago? That was longer ago than that, even, the use of the Duluth road by the Great Northern had been given up before the Hinckley fire, had it not?

A. I guess it had.

Q. The Hinckley fire was in 1894?

A. Yes.

Mr. Young. We now object to this exhibit 6, offered in evidence by the complainants, as incompetent, immaterial, hear-
168 say and as secondary evidence, for which no proper foundation has been laid.

S. A. KEMP.

Subscribed and sworn to before me this 11th day of December, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

The following is the testimony of James J. Hill taken at 169
the City of Minneapolis in the Peter Power case, as the same appears in the record in the case of The United States v. Northern Securities Company et al. This testimony, together with all exhibits pertaining thereto, except the Twelfth Annual Report of the Great Northern Railway Company, but including the map attached to that report, was introduced by the Complainant herein as original testimony in this cause, at the hearing in the City of New York on November 17th, 1902. The exhibits introduced in connection with this testimony of Mr. Hill appear elsewhere. The testimony follows: 170

JAMES J. HILL, after being first duly sworn, testified as follows, in answer to questions propounded by Mr. Lancaster:

Q. Mr. Hill, you will give your name and residence.

A. James J. Hill; St. Paul, Minn.

Q. On the 30th day of December, 1901, you were president and a director of the Great Northern Railway Company?

A. Yes, sir.

Q. And how long have you been president and a director of 171
said company?

A. Since its organization.

Q. What year was that, please?

A. The fall of 1889, I think.

Mr. Kellogg. I wish to enter an objection to any testimony in this case as irrelevant and immaterial, and on the ground that the bill of complaint states no cause of action, and I suppose it may be understood that I need not repeat this objection to every question.

Mr. Lancaster. That may be stipulated. 172

Mr. Kellogg. And I can urge it as though it was placed against every question.

Q. Mr. Hill, about how many miles of railway does the Great Northern system comprise, including branches?

A. And proprietary lines?

Q. Yes.

A. 5,700 or 5,800.

173 Q. What are the eastern termini of the Great Northern Railway system?

A. The Twin Cities and the head of Lake Superior.

Q. Duluth?

A. Duluth and Superior.

Q. What are the western termini of the same road?

A. Puget Sound. It has a line along the shore principally of Puget Sound.

Q. And does it reach Seattle?

A. Yes, sir.

174 Q. And Tacoma?

A. No, sir.

Q. Well, does it reach Portland?

A. No, sir. Over another line.

Q. Does it have a line of railway extending from St. Paul and Minneapolis to Duluth?

A. Yes, sir.

Q. And a line of railway from Minneapolis and St. Paul to Moorhead?

A. Yes, sir.

Q. And to Crookston?

175 A. Part of the same line.

Q. And does it also extend to East Grand Forks?

A. Yes, sir.

Q. And all of those towns in the State of Minnesota?

A. Yes, sir.

Q. Your line also reaches Fargo, N. Dak.?

A. Yes, sir.

Q. Does your line also extend from St. Paul and Minneapolis westward to Wahpeton, N. Dak.?

A. One of the lines to Moorhead and Fargo extends to Wah-

176 peton and passes through Wahpeton.

Q. And touches Breckenridge?

A. Yes, sir.

Q. Which is in the State of Minnesota?

A. Yes, sir.

Q. Through what states does the Great Northern Railway system go or pass?

A. There are some lines in Wisconsin, Minnesota, both Da-

kotas, Montana, Idaho, and Washington. There are some 177
lines in British Columbia. That is all.

Q. And it had all of these lines and was operating all of these lines on and prior to December 30, 1901, did it?

A. Practically. There may a few miles have been added since that time, but practically.

Q. Practically all of these lines that you have described were operated and owned by the Great Northern road at and prior to December 30, 1901?

A. Either operated by the Great Northern road—some of them, known as Great Northern lines, are operated by their 178
own companies separately.

Q. Well, all of those lines that you have described, Mr. Hill, were, on the 30th day of December, 1901, and prior thereto, known and operated as a part of the Great Northern Railway system, were they not?

A. The Eastern Minnesota, the Montana Central, Spokane Falls and Northern, and Kootenai Valley are all operated by their own separate corporations.

Q. Well, are the stocks of all of those roads owned and held by the Great Northern Railway Company?

A. Substantially all. 179

Q. The main line, Mr. Hill, from St. Paul and Minneapolis to Seattle, is that owned directly by the Great Northern Railway Company?

A. Owned by the St. Paul, Minneapolis and Manitoba. Leased.

Q. Is it leased?

A. By the Great Northern.

Q. Leased by the Great Northern?

A. Yes.

Q. For how long a time? 180

A. Nine hundred and ninety-nine years; and the Great Northern substantially owns the stock.

Q. That is, substantially owns the stock of the St. Paul—

A. Minneapolis and Manitoba; yes.

Q. And that was the condition on and prior to the 30th day of December, 1901?

A. Yes, sir.

181 Q. And the Great Northern Railway Company was on that day, and prior thereto, operating the main line from St. Paul and Minneapolis to Seattle?

A. Yes, sir.

Q. And that main line passes in a northwesterly direction from St. Paul and Minneapolis through the State of Minnesota, does it not?

A. Yes, sir.

Q. And in a westerly direction through the State of North Dakota?

182 A. Yes, sir.

Q. And in a practically westerly direction through the State of Montana?

A. Yes, sir.

Q. And through the States of Idaho and Washington?

A. Yes, sir.

Q. To Puget Sound?

A. That is correct.

Mr. Lancaster. Mr. Kellogg, we would like to have in the record here a map. We have one. This is the Great Northern. We have another one here of the Northern Pacific, but I 183 think this was gotten out after the purchase of the Burlington. It shows the three systems, and that is attached to the Great Northern report for 1901.

Mr. Kellogg. That map is substantially correct, as such railway maps are.

Mr. Lancaster. Very well, that may be taken.

Mr. Kellogg. Of course, that is not an exact map of the railroads. It is what is usually printed in advertising sheets and time tables, as railway maps.

Mr. Boutelle. It is a little more accurate than that, isn't it?

Mr. Kellogg. I don't know how accurate it is.

184 Mr. Lancaster. I just want to show what this is, Mr. Kellogg.

Mr. Kellogg. All right.

(The map was marked "Complainant's Exhibit A.")

Q. Mr. Hill, I will show you complainant's Exhibit A, which has been identified by the Examiner, which is a map attached to the twelfth annual report of the Great Northern

Railway Company for the fiscal year ending June 30, 1901, 185
and ask you if in a general way that shows the lines of railways of the Great Northern Railway system, the Northern Pacific system, and the Chicago, Burlington and Quincy Railroad system.

A. Yes, sir; that in a general way shows the various lines of the three systems.

Q. I will ask you if the Great Northern Railway system is shown in red lines on the map.

A. Yes, sir.

Q. And the Northern Pacific Railway system is shown in 186
green on the map?

A. Yes, sir.

Q. And the Chicago, Burlington and Quincy Railway system is shown in blue?

A. That is correct.

Q. I would like a little explanation of this, Mr. Hill. I call your attention to dotted lines in blue in the State of Montana, extending northwesterly from Huntley, and ask you what those dotted lines are proposed to show.

A. Supposed to show surveys, or they may show probable surveys or possible lines. 187

Q. Surveys for proposed lines?

A. Proposed lines or possible lines.

Q. Or extensions?

A. Yes.

Q. Now, I call your attention to the dotted lines in red extending from Armington, in a general southeasterly direction, and ask you what those dotted lines in red show, and what they indicate.

A. They indicate a possible extension.

Q. Well, in the case of the Great Northern do they show a 188
proposed extension of the Great Northern line?

A. Not at present.

Q. About what time, Mr. Hill, was this map, Exhibit A, gotten out by the Great Northern road?

A. Oh, about the time of the publication of the report, I should think.

Q. It isn't dated?

189 A. The report is dated; yes.

Q. That is the end of the fiscal year, June 30; but this was not gotten out until long afterwards, was it?

A. It is usually gotten out in the month of September. I suppose that map was made, possibly, in September, 1901.

Q. September, you think, 1901?

A. Yes, sir.

Q. Now, at the time when this map was gotten out, were those red lines from Armington intended to show a proposed extension of the Great Northern?

190 A. No, sir. They are simply meant as a possibility. It may be an advertisement or it may be some suggestion or possibility.

Q. At the time this map was gotten out, some time in September, 1901, had there been an actual survey of that line by the Great Northern Railway as shown by this map?

A. I don't think there has ever been any survey by the Great Northern Railway over that ground.

Q. I don't wish to take up much time on this, Mr. Hill, but wish to call your attention to this—the red dotted lines from Portland, Oreg., up to Seattle. At the time this map was 191 gotten out, was there a proposed extension, as shown by the dotted lines there, on the part of the Great Northern?

A. No, sir. That is possibly meant—probably meant—I don't know who put it there, but it probably meant to cover a grade that was partially built ten or twelve years ago.

Mr. Grover. By another company?

A. Built by the Portland and Puget Sound Railroad.

Q. Well, as a matter of fact, then, Mr. Hill, at the present time, or on the 30th day of December, 1901, the dotted lines to which I have just called your attention, from Seattle to Portland, was not a proposed extension?

192 A. I tried to explain that, that these were mere suggestions. I don't imagine that it would be possible to build a line around that particular location. I think that line would run over the top of steep hills. There is a valley there most of the way.

Q. Well, I will ask you this: Was there on the 30th day of December, 1901, an actual proposed line by the Great Northern road between Seattle and Portland?

A. No, sir. There was a survey down in some places on one side of the Northern Pacific, and some places it is on the other, of a line built or partially built—partially graded—in 1890, I think. 193

Q. By another company?

A. Yes, sir; by a company called the Portland and Puget Sound.

Q. Now, with reference to the two other dotted lines, extending northerly from the main line of the Great Northern, or take the three dotted lines there; what were those dotted lines intended to show and what do they show? 194

A. One of them, running down through the center of Kootenai Lake, shows the steamboat route. This line running up the Columbia River up to the mouth of the Okanogan, that may show a steamboat line and it may show a possible railway line. I couldn't say. There is a steamboat running there.

Q. There was not, then, on the 30th day of December, 1901, a proposed line from Huntley, in the State of Montana, to Armington, by the Chicago, Burlington and Quincy Railway system and the Great Northern Railway system?

A. I could answer for the Great Northern that there was not; I could not answer for the Burlington. 195

Q. I will ask you, Mr. Hill, if you knew of your own knowledge of any proposed extension on the part of the Chicago, Burlington and Quincy Railway Company?

A. I think the Chicago, Burlington and Quincy had engineers within the last year in that country; whether they completed their work or whether they did not, I could not say.

Mr. Lancaster. Now, Mr. Kellogg, we will offer this map in evidence.

Mr. Kellogg. All right, put it in evidence. It will be received subject to the same objection. 196

Mr. Grover. Is there a scale on it?

Mr. Lancaster. I don't think there is. As I stated, practically all we want it for is to show the directions and main lines, etc.

Mr. Kellogg. Well, it may be received subject to the objection that it is irreleant and immaterial.

197 Mr. Lancaster. Mr. Kellogg, have you any objection to the report going in?

Mr. Kellogg. I don't see what that has to with the Northern Pacific Railway. I object to that report going in generally. I don't know what is in the report. I haven't examined it. It is certainly incompetent against the Northern Pacific Railway Company.

Q. I will ask you, Mr. Hill, if complainant's Exhibit B is the Twelfth Annual Report of the Great Northern Railway Company issued some time in September, 1901.

198 A. It has that appearance; I haven't compared it with the copy.

Q. You have no doubt, I suppose, Mr. Hill, but what that is official?

A. It has every appearance of being the report.

Q. (Mr. Boutelle.) Is that the printed report that was issued by the Great Northern, as it went out? This is a report, or a printed copy of a report, that was actually published by the Great Northern road and sent out to the stockholders?

A. It may be. I could compare it with a correct copy and then I could say that it is, but I have not read it. I don't

199 know that it is not.

Mr. Boutelle. That is not the question.

Q. You haven't any doubt, have you, Mr. Hill, but what that is the official printed copy?

A. It has every appearance. I have not read it, and without reading it I couldn't swear that it was.

Q. You did cause, Mr. Hill, on behalf of the Great Northern Railway Company, in September, 1901, to be sent out a printed copy of the Twelfth Annual Report, did you not?

A. The company has printed every year an annual report.

Q. Of your own knowledge, do you know that such a

200 printed report was gotten out in September, 1901?

A. It is made from the annual report and sent to the shareholders.

Q. I say you know of your own knowledge that a printed copy was sent out?

A. Yes, sir.

Q. You have seen those printed copies, have you not, Mr. Hill?

A. Yes, sir. 201

Q. And you are not able to tell that that is one of the printed copies which the Great Northern road had printed and sent out in September, 1901, as its Twelfth Annual Report?

A. I haven't read it. It has the appearance of the Twelfth Annual Report, but without reading it I couldn't say.

Q. It wouldn't be necessary for you to read it all through, Mr. Hill, to tell whether or not it was one of the printed copies which your road sent out.

A. I don't know how I could swear it was a correct copy 202
without comparing it with a correct copy. I don't know what is in that.

Q. I don't ask you, Mr. Hill, whether it is a correct copy of the annual report as prepared, but what I want to know is if that is not one of the printed copies which the Great Northern road sent out?

A. I don't know that, sir. I said it had the appearance of it.

Mr. Kellogg. This is hardly a fair examination. What do you want of this report?

Mr. Lancaster. I want to have it identified as the printed 203
report of the Great Northern road, and I suppose you will admit that, won't you?

Mr. Kellogg. If we have time to examine it, we will see. You have not pointed out anything you want, and it is not proper evidence in this case. If you will point out anything you want to introduce we will see if we will admit it or not. At present it is objected to as incompetent, irrelevant, and immaterial.

Mr. Lancaster. I haven't got to that. I was simply trying to identify it and to save the time of pursuing this examination of Mr. Hill. I asked you if you would admit that this 204
was a printed copy of the twelfth annual report of the Great Northern road; the question of whether it shall be received in evidence is something to be reached later.

Mr. Grover. If that is not a correct one, you can get one that is.

Mr. Lancaster. Certainly.

205 Mr. Kellogg. Well, subject to the right to examine it and make any corrections, we are willing to admit that this is the printed copy of the twelfth annual report of the Great Northern Railway Company.

Mr. Lancaster. Yes, sir; and you will have the privilege of examining it, and if you prefer you can bring a copy of your own and we will substitute it.

Mr. Kellogg. Well, it isn't in evidence yet.

(The twelfth annual report of the Great Northern Railway Company was marked by the Examiner "Complainant's Ex-
206 hibit B.")

Mr. Lancaster. Complainant offers in evidence complainant's Exhibit B.

Mr. Kellogg. This is especially objected to as incompetent and as irrelevant and as immaterial.

Q. Now, Mr. Hill, I want to get into the record the names of the directors of the railroads—the Great Northern, the Northern Pacific, and the Chicago, Burlington and Quincy Railway Company—and I thought possibly that might help your memory a little.

Mr. Young. At what date?

207 Mr. Lancaster. On and prior to December 30, 1901.

A. That states the directors prior to October, 1901.

Q. That is, the twelfth annual report shows the directors of the Great Northern road on and prior to December 30, 1901?

A. No; prior to October, 1901.

Q. Well, I will take those and note the changes.

Mr. Bulkley. How long have they been directors?

A. James J. Hill, William P. Clough, D. Miller, Edward Sawyer, M. D. Grover, R. I. Farrington, Jacob H. Schiff, Henry W. Cannon, James N. Hill, Samuel Hill, and E. T. Nichols.

208 Q. What changes in the directors were made subsequent to October and prior to December 30, 1901, Mr. Hill?

A. The election of the company was held in October and changes were made.

Q. Will you indicate the changes that were made in the board of directors?

A. A director was elected in place of Jacob H. Schiff, whose term expired.

Q. And who was elected in his place, Mr. Hill? 209

A. I am not certain whether it was Mr. Nichols or Mr. Farrington.

Q. Mr. Nichols and Mr. Farrington were directors of the old board, weren't they?

A. No, sir.

Q. E. T. Nichols?

A. No, sir.

Q. I guess that is right. I took these from a later date. Mr. Farrington, Mr. Hill, appears to be a director prior to October, 1901; it must have been Mr. Nichols, then, that was 210 substituted for Mr. Schiff. Is that correct?

A. I couldn't say without the record; it is only a matter of recollection. To be accurate, I can give you the information upon that point.

Mr. Kellogg. What do you care if you have the present board?

Mr. Lancaster. I had these names here, and I wanted to get it straightened out.

Q. Then the present board, Mr. Hill, would be James J. Hill, William P. Clough, D. Miller, Edward Sawyer, M. D. Grover, R. I. Farrington, Henry W. Cannon, James N. Hill, 211 Samuel Hill, and E. T. Nichols, if Mr. Nichols was the one that was elected?

A. That would not be correct.

Q. In what respect isn't it correct? Give the present board.

A. I can't; I don't remember the names. I know that Mr. Miller is not a member of the present board. That is my best recollection. Colonel Clough is not a member, or Mr. Schiff.

Q. When was the annual election held?

A. I don't remember the time. I wasn't present. It was 212 adjourned.

Q. Mr. Hill, I suppose you would have no difficulty in giving us the names of the directors that were elected?

Mr. Grover. I will give you those names.

A. You will have no difficulty at all.

Mr. Grover. I haven't them now, but I will give them to you.

213 Mr. Lancaster. If you will submit to the Examiner a correct list——

Mr. Grover. Yes, I will send it to him.

Mr. Lancaster. What I want is the directors that were elected at the annual meeting in October and the changes, if any, that have been made subsequent to that date and prior to December 30, 1901.

Mr. Grover. I can tell you now, off-hand of course, there were no changes.

Mr. Lancaster. If you will consent to Mr. Grover's put-
214 ting those in here we would just as soon have it in that way.

Mr. Grover. Mr. Farrington succeeded the gentleman from New York, Mr. Todd; Mr. Dean succeeded Mr. Schiff, and Mr. Weyerhauser succeeded Mr. Clough, and there was only one election.

Mr. Lancaster. And those gentlemen were elected at the October meeting?

Mr. Grover. They were elected at the October meeting. It was when the adjourned meeting was held. Not the first day of the meeting, but the annual October meeting adjourned. Mr. Todd was a member and resigned, and Mr. Far-
215 rington succeeded him some time previous to October.

Q. Now, with those changes, Mr. Hill, that constitutes the present board of the Great Northern Railway Company?

A. Yes, sir.

Q. And that constituted the board on the 30th day of December, 1901?

A. There has been no change since the board was elected.

Q. And Mr. William P. Clough, was he a director on the 30th day of December, 1901?

A. No, sir.

Mr. Grover. He resigned weeks before that and Mr. Weyer-
216 hauser succeeded him.

Q. Mr. Hill, do you know when the annual meeting of the Northern Pacific Railway Company was held in 1901?

A. I do not know accurately, but have an impression it was about the 13th of November. It might have been prior to that time.

Mr. Kellogg. Mr. Mellen can tell you that.

Q. Mr. Hill, you were elected a director of the Northern 217
Pacific Railway Company. Do you remember about what time that election took place?

A. I think it was held in July or early August.

Q. I will show you this. This is the report of the Northern Pacific. This shows that you were elected July 23, 1901. Is that your recollection?

A. I think that is substantially correct. No doubt it is.

Q. And how long did you continue a director in the Northern Pacific Railway Company?

A. I didn't qualify or accept the position or attend a meet- 218
ing until after the election in the fall.

Q. November?

A. It might have been October or November, but my recollection is that I attended one meeting in November and resigned from the board. I remember when I was elected I called attention to the fact that I was not eligible.

Q. Well, you probably resigned, then, some time in November, 1901?

A. I think about the 17th or 18th of November.

Q. On and prior to December 30, 1901, were you a director of the Chicago, Burlington and Quincy Railroad Company? 219

A. Well, there are two companies, and the railroad company is the older company. I am not certain.

Q. You are not certain whether you were a director of the railroad company?

A. Or not.

Q. Were you ever a director of the Chicago, Burlington and Quincy Railroad Company?

A. I am not sure. I could tell by referring to the record. I am a director in a number of companies, and I have to depend on the record better than my recollection.

Q. Will you examine your records, Mr. Hill, and see if you 220
ever were a director of the Chicago, Burlington and Quincy Railroad Company, and if so when you were elected, and if you are still a director of that company?

A. Yes, sir; I will do so.

Q. Were you on the 30th day of December, 1901, and prior thereto, a director of the Chicago, Burlington and Quincy Railway Company?

221 A. Yes sir; I was.

Q. And are you such director at the present time?

A. Yes, sir.

Q. About when did the Northern Pacific Railway Company and the Great Northern Railway Company conclude their negotiations for the purchase of the Chicago, Burlington and Quincy Railroad Company?

A. I think the stockholders did not take action. I think the action was taken in the first instance by the company in approving the purchase by resolution of the board of direc-
222 tors. I don't recollect a stockholders' meeting to consider that matter.

Q. Well, what I am getting at, Mr. Hill, is, at what time was the matter virtually concluded, that is, when were the negotiations concluded?

A. I think the negotiations were concluded subject to approval some time in April, 1901.

Q. Had the Great Northern Railway Company or the Northern Pacific Railway Company for several months prior to April, 1901, acquired large holdings of stock in the Burlington system?

223 A. They had not acquired a dollar, nor anyone representing them, directly or indirectly.

Mr. Kellogg. That is, you mean prior to the conclusion of the negotiations?

A. Yes, sir.

Q. Did you, Mr. Hill, prior to April, 1901, hold stock in the Burlington system?

A. Not a share.

Q. Had the common stock of the Chicago, Burlington and Quincy Railroad Company been purchased for or on account of either the Great Northern or Northern Pacific prior to
224 April, 1901?

A. I can speak for the Great Northern. There was not one share, either for account for the company or for anyone connected with the company, and I believe that was the case with regard to the Northern Pacific. I have no knowledge.

Mr. Kellogg. You mean prior to whenever those negotiations were completed? Mr. Hill didn't pretend to be certain of the date of that negotiation.

Q. You say, Mr. Hill, that the negotiations, as near as you 225
can recall, were concluded some time in April, 1901?

A. That is my recollection.

Q. Now, of course, we are talking with reference to the month of April as being the time when the negotiations were concluded. I don't want to be misunderstood.

Mr. Grover. That is correct.

Q. Now, Mr. Hill, the stock of the Chicago, Burlington and Quincy Railroad Company was held by a large number of individuals, was it not?

A. Yes, sir; about 18,000, I think. 226

Q. Did either the Great Northern or Northern Pacific commence in the fall of 1900 to purchase the stock of the Chicago, Burlington and Quincy Railroad Company from individuals?

A. The Great Northern did not in the fall, or at any other time before or since, purchase any shares of the Chicago, Burlington and Quincy Railroad Company from any individual shareholders, nor did anyone connected with the Great Northern or for the Great Northern directly or indirectly.

Q. Then I understand, Mr. Hill, that at no time prior to the conclusion of the negotiations which took place in April, 1901, 227
did you individually, or for or on account of the Great Northern Railway Company, own or hold any shares in the Chicago, Burlington and Quincy Railroad Company?

A. I never bought any for myself, never owned any prior to that time, and never have owned any except as a director, if I am a director; I don't know that I am. And to answer your question in regard to the Northern Pacific, I have no accurate knowledge as to what was done for the Northern Pacific, but I have a distinct recollection that Mr. Morgan told me that neither the Northern Pacific nor his firm, nor anyone connected with it, could or would buy a share of the 228
stock of the Burlington pending the negotiations.

Q. Well, when, Mr. Hill, did the negotiations for the acquirement of the stock of the Chicago, Burlington and Quincy road commence? About when?

A. The actual negotiations, I should say, commenced about or after the middle of January, 1901.

229 Q. And is it your recollection that negotiations had been had in the fall or early winter of 1900?

A. Yes, sir; I know there were no such negotiations prior to the first of January or to Christmas.

Q. That is the 1st of January, 1901?

A. The 1st of January, 1901, or Christmas, 1900.

Q. Who conducted the negotiations on the part of the Great Northern road for the acquirement of this stock of the Burlington?

A. I did.

230 Q. And who conducted the negotiations on the part of the Northern Pacific?

A. Members of the house of J. P. Morgan & Co., who were directors, and I remember Mr. Robert Bacon and Mr. Baker—Mr. George F. Baker, who was a director in the Nothern Pacific.

Q. And with whom were the negotiations carried on; that is, with whom representing the Burlington system?

A. With the members of the executive committee of the Burlington and Quincy board of directors.

Q. Can you give us the names of those gentlemen, Mr.

231 Hill?

A. Mr. Charles E. Perkins——

Q. Of New York?

A. Burlington.

Q. Burlington, Iowa?

A. Burlington, Iowa. Mr. Huniwell, of Boston; Mr. Forbes, of Boston; Mr. Olney, of Boston, and General Paine, of Boston. I think that covers the names of those present.

Q. I understood you to say, Mr. Hill, that these negotiations were concluded in April, 1901? Do you refer to the action taken by the directors of the different companies?

232 A. I think the action by the Great Northern was taken in April, 1901.

Q. That is, at a meeting of the board of directors?

A. Yes, sir.

Q. And where was that meeting held?

A. I think it was held in St. Paul.

Q. At that time, Mr. Hill, the negotiations had been closed,

subject to ratification by the boards of directors of the differ 233
ent companies, had it?

A. The understanding arrived at was ready to submit to the board of directors.

Q. That is, you representing the Great Northern and the gentlemen that you have named representing the Northern Pacific, and the executive committee representing the Burlington, had agreed upon a basis of purchase subject to the approval of the boards of the different companies?

A. I think the executive committee of the Burlington had stated that they would recommend their shareholders to 234
accept, and that was submitted to the other companies. I think that was the manner in which the matter was decided, and it is my best recollection of what occurred.

Q. Now, at the time when the negotiations were concluded, and the matter ready to be submitted to the board of directors of the different companies, had either the Great North ern or the Northern Pacific any option on any of the stock of the Burlington road to your knowledge?

A. Outside of the negotiations carried on with the executive committee?

Q. Yes. 235

A. I know that the Great Northern had no options or interest in any options, or any interest in any purchase of stock.

Q. So that when the executive committee of the Burlington road arrived at an understanding with you representing the Great Northern, and the gentlemen named representing the Northern Pacific, their action would simply be advisory to 18,000 individual stockholders of the Burlington Railroad Company. Is that correct?

A. Please state that again.

Q. I say that at the time when you, representing the Great Northern, and J. Pierpont Morgan and others representing 236
the Northern Pacific, and the gentlemen, Mr. Perkins and others, representing the Burlington—I say when you arrived at a basis of purchase of the stock, that stock was still owned and held by some 18,000 stockholders, and the action of the executive committee representing the Burlington would simply be advisory to those stockholders?

A. That is all.

237 Q. And all that the executive committee representing the Burlington, then, could or attempted to do in those negotiations was to arrive at some basis which they would recommend their stockholders to accept?

A. And that is what they did.

Q. I say that is what they attempted to do and what they did?

A. Yes, sir.

Q. So that, so far as you know, Mr. Hill, there had been no substantial change in the holdings of the Burlington stock
238 after the commencement of negotiations and up to the time when the executive committee undertook to advise their stockholders to make this exchange?

A. There were reported more or less transactions in the stock. The price advanced, and more or less transactions were repoted. Outside of that I have no knowledge, and I had no special knowledge of any kind.

Q. I notice in the report of the Great Northern, which I understood you to say was submitted to the public or printed in September, 1901, states that the Northern Pacific and Great Northern had actually acquired 96.79 per cent of the
239 total authorized issue of the stock of the Chicago, Burlington and Quincy Railroad Company. That stock was all acquired between the submission of this matter to the boards of directors of the three different companies and the publication of this report, was it?

A. Yes, sir; it was all acquired after it was authorized by the Great Northern and Northern Pacific, and the authority was given, I think, to make the purchase in April.

Q. That is, the authority given by the board of directors of the Northern Pacific and the Great Northern, you mean. The matter was submitted to the board of directors of the North-
240 ern Pacific and Great Northern in April, 1901?

A. Yes, sir.

Q. Now, how soon after that submission to the boards of directors of the different companies was this stock of the Chicago, Burlington and Quincy Railroad Company acquired? Do you remember about what time it was when you had acquired this 96.79 per cent?

A. There was a large amount of it deposited under the 241
agreement to purchase within a short time after the understanding was arrived at with the Burlington and Quincy executive committee, but I don't carry in my mind the percentage or the changes in the percentage.

Q. Do I understand you to say, Mr. Hill, that probably a majority of the stock was acquired right away?

A. Oh, I think that the understanding was based upon two-thirds or three-fourths of the Quincy company shareholders; that is, two-thirds or three-fourths of the shares accepting the purchase price. 242

Q. Did the executive committee representing the Chicago, Burlington and Quincy Railroad Company guarantee to procure that amount at the time when you say you arrived at a basis?

A. No, sir; they made no guaranty.

Q. Was there any agreement in writing between the executive committee of the Chicago, Burlington and Quincy Railroad Company and the Great Northern, or yourself representing the Great Northern, or yourself individually, and the Northern Pacific road, or anybody representing it, with reference to this exchange of stock or sale of stock? 243

A. There were a great many matters put in writing and circulars, but as to whether the preliminary agreement was in writing I don't remember.

Q. Were you present, Mr. Hill, at the time the basis of purchase was agreed upon?

A. I was present at a number of meetings and I think I was present when everything substantially was agreed upon that was done.

Q. Are you able to state whether or not the provisions and terms of that agreement were reduced to writing?

A. The whole matter was a formal one, and reduced to 244
writing as it was carried out. Whether there was a protocol or a preliminary agreement I don't remember.

Q. Do you remember of signing any preliminary agreement?

A. I don't recall any. The basis was substantially arrived at, and any modifications were subject to telegram or correspondence or personal negotiations.

245 Q. Was this matter submitted by you to the directors of the Great Northern road, at its meeting in April, in wirting?

A. I don't remember.

Q. You don't remember whether you made any written report?

A. Or verbal report; I couldn't say which.

Q. I suppose you can ascertain, can't you?

A. Oh, yes.

Mr. Grover. I can tell you all about it at any time when you want to know.

246 A. I was very busy those days, and I don't remember everything that happened.

Q. No doubt of it, Mr. Hill; you must have been. About what time were the joint bonds of the Northern Pacific and the Great Northern roads issued with which to purchase the stock of the Chicago, Burlington and Quincy?

A. That was a detail with which I had little to do and do not recall.

Q. I am not going into that for the details, Mr. Hill, but about what time—June or July?

A. I should say May or June.

247 Mr. Grover. The whole thing was ended before June, Mr. Lancaster.

Q. So that about the 1st of June or 1st of July, 1901, the Great Northern and Northern Pacific roads held and owned a large majority of the stock of the Chicago, Burlington and Quincy Railroad Company?

A. Yes, sir.

Q. Now, after the purchase of that stock by the Great Northern and Northern Pacific, was there a company organized under the name of the Chicago, Burlington and Quincy Railway Company?

248 A. Yes, sir; there was such a company organized.

Q. And that was organized under the laws of the State of Iowa, was it not?

A. Yes, sir; I think so.

Q. The Chicago, Burlington and Quincy Railroad Company was organized under the laws of Illinois, was it not?

A. Possibly, the parent company, but I think there were a

number of companies; I think there were a great many com- 249
panies in the Burlington and Quincy Railroad Company.

Q. There was one distinct organization or company or corporation known as the Chicago, Burlington and Quincy Railroad Company, wasn't there?

A. Yes, sir.

Q. And that was organized under the laws of the State of Illinois?

A. I think it was.

Q. And the different corporations that you speak of or organizations under that, the stock of those different com- 250
panies was held and owned by the main company—that is, the Chicago, Burlington and Quincy Railroad Company?

A. It held the stocks of various companies. I don't carry in my mind the details of those matters.

Q. I don't expect you do, and I didn't mean to ask you for the details, merely the main points, Mr. Hill. Now, the Chicago, Burlington and Quincy Railway Company is at the present time, and was on the 30th day of December, 1901, operating what is known as the Burlington system?

A. Yes, sir.

Q. And it is operating that system under a lease? 251

A. Yes, sir.

Q. About when, Mr. Hill, was that lease executed from the railroad company to the railway company?

A. I couldn't give the exact date, but some time in the fall.

Q. The fall of 1901?

A. Yes, sir.

Q. Where are the principal offices of the railway company located?

A. The president's office is in Chicago.

Q. And where are the principal offices of the railroad com- 252
pany?

A. In Chicago; or the official office may be in Burlington as the old company. I don't know.

Q. That is, you mean the official offices of both companies or of the railway company?

A. The president's office is in Chicago. Now, where the official office of the company is, if it has an office outside of

253 Chicago, I don't know. I think several of those corporations hold their meetings in the states they are organized in.

Q. What is the capital stock of the railway company?

A. *I don't recollect the amount.*

Q. Has the amount been fixed, Mr. Hill?

A. That I couldn't say. It hadn't been when I attended the last meeting?

Q. Are you a stockholder in the railway company?

A. Only to qualify.

Q. Well, as a matter of fact, at the present time has there been any stock issued excepting to qualify officers?

254

A. I think there has.

Q. And do you know how much?

A. No, sir.

Q. Do you remember what the authorized capital stock of the railway company is?

A. Only an impression that it has an authorized capital stock of one hundred million, I think.

Q. And you cannot give us any idea as to how much has been issued?

A. No, sir; I couldn't without it being a wild guess, for I

255 don't know.

Q. Is it more, Mr. Hill, than a nominal amount; that is, up to the present time?

A. I couldn't give the amount; I don't know.

Q. Well, is the stock on the market for sale?

A. Oh, no; not at all.

Q. And do you know at the present time of your own knowledge of any considerable amount of stock having been sold?

A. That stock belongs to the Great Northern Railway and to the Northern Pacific Railway.

256 Q. The stock of the railway company?

A. Yes, sir.

Q. Now, did you acquire that? How did those roads acquire the stock of the railway company, Mr. Hill?

A. Bought it.

Q. When?

A. As it was issued.

Q. Well, when was it issued?

A. I couldn't give the date; along through the autumn or 257
fall.

Q. Can you ascertain from your office at St. Paul how much stock of the Chicago, Burlington and Quincy Railway Company has been issued to the Great Northern road?

A. I could not. I could from New York.

Q. Well, do you know, Mr. Hill, of your own knowledge that any stock of the railway company has been issued to the Great Northern Railway Company?

A. I haven't seen it, but I know that the stock would be issued to the Great Northern as fast as it is issued, and I 258
know that the stock has been paid for.

Q. Do you mean by that, Mr. Hill, that the Northern Pacific and Great Northern roads, whatever stock comes to them they are to pay for in cash?

A. I am speaking for the Great Northern, and that stock would be paid for in cash.

Q. Do the Great Northern and Northern Pacific own the stock of the railway company by reason of any agreement or understanding with reference to the buying of the stock of the railroad company?

A. The conditions are set out in the lease, and I don't recall 259
what they were.

Q. Have you a copy of that lease?

A. I have not.

Q. Has the Great Northern road got a copy?

A. It perhaps has in New York; I don't think there are any copies in St. Paul.

Q. Mr. Hill, do you understand that whatever stock is issued by the railway company is to go to the Great Northern and Northern Pacific Railway companies?

A. It goes to them.

Q. Yes? 260

A. Yes, sir; that is my understanding.

Q. And is that stock to be paid for in cash by those two companies?

A. Yes, sir.

Q. Well, at par?

A. At par.

261 Q. And neither of those companies, the Great Northern Railway Company nor the Northern Pacific Railway Company, acquired that stock by reason of the purchase of the stock of the railroad company?

A. If that stock was issued to them at par and paid for in cash, that would be the consideration.

Q. I understand.

A. And that is, as I understood your question, my answer.

Q. I understood you to say a moment ago that the stock, as fast as it is issued by the railway company—that is, the
262 Burlington Railway Company—is to go (I suppose in equal shares, is it not?) to the Northern Pacific and Great Northern?

A. Yes, sir.

Q. And that that stock is to be paid for at par in cash by the respective companies, the Northern Pacific and the Great Northern?

A. Stock might be issued for the stock of the Burlington—of the old railroad company. That stock might be issued for that, but you are asking me for stock that was issued—at least I understood you—for stock that was issued now, and
263 I so testify in regard to that.

Q. I read your testimony, Mr. Hill, before the Interstate Commerce Commission. I may not have understood it. I don't want to pursue this unnecessarily, but I want to get it straight.

A. That report is very garbled, and it might be that you got hold of some inaccurate portion of it.

Q. We have a transcript of the testimony as taken; not a newspaper report.

A. The testimony was not examined or verified, and it is very incorrect. I know something of it. It is full of mis-
264 takes, some of which are ridiculous.

Q. I understood, Mr. Hill, that the stock of the Burlington Railway Company, the amount to be issued, etc., has not been agreed upon.

A. It has not been determined; no, sir.

Q. And there is a provision and agreement between the Northern Pacific and Great Northern Railway and the rail-

way company that whatever stock is issued shall go in equal 265
shares to the Northern Pacific and the Great Northern Railway Company?

A. That is correct.

Q. Now, that stock may be issued to those companies and paid for in cash at par?

A. That is right.

Q. Or it may be exchanged for stock of the old railroad company?

A. Yes, sir; it might.

Q. The 96.79 per cent of the capital stock of the old rail- 266
road company is now pledged as collateral security for the payment of some two hundred and nine or ten million dollars of collateral bonds?

A. Yes, sir; joint collateral bonds.

Q. So that the only way that either road, the Great Northern or Northern Pacific, could exchange stock of the old company for stock of the railway company would be by payment of those bonds and acquiring that stock?

A. The only way in which they could deliver the stock to the purchaser would be to pay off the bonds.

Q. Now, is the agreement, or understanding, or expectation 267
of the railway company to issue its stock—that is, the railway stock—and sell the same for cash, any considerable amount of it?

A. I have no agreement or understanding in reference to that.

Q. Is or is it not the understanding and agreement that eventually the stock of the railroad company, which is now pledged as collateral security for the collateral bonds—trust bonds of the Great Northern and Northern Pacific—when those bonds are paid, that that stock shall eventually be turned over to the railway company in exchange for its own 268
stock?

A. That could be done, and that has been considered, but there is no definite information.

Q. In a general way, is that the plan and expectation of the Great Northern and Northern Pacific Railway companies?

A. There is no plan so far advanced as that that I know of.

269 Q. At the present time the stck of the railway company, whatever stock is issued, is owned by the Great Northern or Northern Pacific Railway Company?

A. Yes, sir.

Q. And those two roads own, so far as you know, all the stock, excepting possibly a qualifying stock for directors.

A. Yes, sir.

Q. Of that road?

A. Of that company.

Q. Of that railway company?

A. Yes, sir.

270 Q. Then, Mr. Hill, it is not under the present condition the expectation that any considerable amount of capital stock of the railway company shall be issued—that is, at the present time?

A. It might be to the advantage of the company to issue its stock and sell it, but I don't know of any present or immediate plan for any such action.

Q. Mr. Hill, are the following gentlemen directors of the Chicago, Burlington and Quincy Railway Company: J. J. Hill, W. P. Clough, E. H. Harriman, Mortimer L. Schiff,

271 James Stillman, George B. Harris, John S. Kennedy, George W. Perkins, William H. McIntyre, C. E. Perkins, and C. J. Paine?

A. As a matter of recollection that list contains many of the names, and—but I don't know but it is entirely correct. I will say it is correct, subject to correction, because there are two boards, one of the old company and one of the new, and some of the names are on both. That makes it, as a matter of recollection, a little confusing.

Q. Mr. Hill, the gentlemen whose names have just been given there were directors of the railway company—that is,

272 the Chicago, Burlington and Quincy Railway Company—on December 30, 1901?

A. Yes, sir; I think that these gentlemen were the directors at that time.

Q. What was the purpose or object of organizing the Chicago, Burlington and Quincy Railway Company?

A. To unify the operation and management of the company. The old company is and has been made up of three

organizations, with three sets of operating officers, substantially three sets of accounting officers. 273

Q. Well, did the railroad company, then, lease to the Chicago, Burlington and Quincy Railway Company all of its lines?

A. All of its lines.

Q. And all the lines which it owned or controlled, branch and otherwise?

A. Yes, sir.

Q. Mr. Hill, is the railway company at the present time anything more than a mere operating company? 274

A. It is the lessee.

Q. Well, did it take over, in addition to the lease from the railroad company, any of the stocks or securities of the railroad company in other lines—that is, subsidiary lines?

A. Those stocks, as I explained before, are held as collateral security for the joint bonds.

Q. I don't think you quite understand me. I want to know if the railway company took anything from the railroad company excepting the lease. As I understand it, the railroad company held stocks and securities in various subsidiary companies. Now, were any of those stocks or securities held and 275 owned by the railroad company turned over to the railway company under the terms of the lease?

A. The terms of the lease would be a great deal better than my recollection, and I couldn't testify on that with accuracy.

Q. We haven't the lease, Mr. Hill, and I understood you to say you hadn't a copy of the lease.

A. I haven't a copy of it.

Q. Whereabouts is the copy?

A. I suppose a copy is filed in the different offices throughout the state where the railway is. Maybe it is in Minne- 276 sota.

Q. Hasn't the Great Northern road a copy of the lease?

A. We have no copy in St. Paul.

Q. Mr. Hill, you were not a director of the Chicago, Burlington and Quincy Railroad Company or of the railway company—the Chicago, Burlington and Quincy Railway Com-

277 pany—until after the purchase by the Great Northern and the Northern Pacific Railway companies of the stock?

A. I was not.

Q. Was Mr. Harriman—E. H. Harriman?

A. He was not.

Q. Do you remember about what time you were elected a director of the railroad company?

A. I do not recall the time.

Q. Was it last summer?

A. I should think it was in the autumn.

278 Q. Mr. Hill, I understand that pretty nearly all of the stock of the Chicago, Burlington and Quincy Railroad Company is up with the trustees as collateral security for the Great Northern and Northern Pacific joint bonds. Is there an agreement as to who shall vote the stock of the Chicago, Burlington and Quincy Railroad during the time that that stock is up as collateral?

A. I couldn't recall. I should think there is some provision for voting it, but what that provision is I don't recall.

Q. Well, don't you recall in connection with the last meeting of the stockholders of the railroad company as to who

279 voted the stock?

A. I don't recall that I was there, although I might have been.

Q. Well, don't you know, Mr. Hill, that there is a definite provision as to how that stock shall be voted and who shall vote it while it is pledged?

A. I don't recall. I think there is a proxy named to vote the stock. That is a matter of recollection and not anything more.

Q. Well, was the board of directors of the railroad company at the last election named or suggested by the Northern

280 Pacific and Great Northern Railroad companies?

A. It was arrived at by an understanding.

Q. Between the two roads, the Northern Pacific and the Great Northern?

A. Yes, sir.

Q. And that understanding was carried through by whomever the stock was voted?

A. That is probably correct.

Q. Mr. Hill, it is my recollection that there was such a pro- 281
vision.

A. My recollection is not widely different from that. As I said, I thought there was a provision for a proxy. I think that is the way it was managed.

Mr. Kellogg. Subject to any corrections that we desire to make, we admit that complainant's Exhibit C is a true copy of the trust deed securing the collateral bonds of the Great Northern and the Northern Pacific Railway Company.

Mr. Bulkley. That is understood on all copies, that they are subject to correction. 282

Mr. Kellogg. Yes, sir.

Mr. Lancaster. We offer in evidence complainant's Exhibit C subject to the objection that it is immaterial and irrelevant.

Mr. Kellogg. That is all right.

Q. Now, Mr. Hill, I simply call your attention to Exhibit C. Whatever arrangement was made with reference to voting the stock during the time the stock of the old company, the Burlington Railroad Company, was up as collateral, is contained in the written agreements, Exhibit C.

A. The exhibit covers the agreement in regard to voting 283
the stock.

Q. And that is the only agreement with reference to the power to vote the stock during the time that the same is up as collateral to the joint bond?

A. I know of no other.

Q. So that, as long as the interest is kept up and maintained upon the collateral bonds, the right to vote the stock is in the Great Northern and the Northern Pacific Railway Company?

A. Yes, sir; subject to the conditions of the agreement, of 284
course.

Q. But is that not the condition, Mr. Hill, that as long as the interest is maintained upon the collateral bonds, the Great Northern and Northern Pacific shall vote the stock? Have power to?

A. They shall each vote their own holding, and if they did not agree I think there is a method provided for an election.

285 Mr. Kellogg. Isn't it stated in detail? It is pretty hard to state the substance of a trust deed.

A. I don't carry this matter in my mind.

Q. What I was getting at is, that during the time, Mr. Hill, that this stock of the railroad company is up as collateral to the joint bonds of the Great Northern and Northern Pacific, the two latter roads have the power to vote the stock of the railroad company. That is, as long as the conditions of that agreement, Exhibit C, are kept up.

A. Yes, sir; I suppose they could agree together on any
286 board of directors they saw fit.

Q. That is, the two roads, the Great Northern and the Northern Pacific.

A. Yes, sir. They are the shareholders, and as shareholders they control the property.

By consent of all parties a recess was taken at this time until 1:30 o'clock in the afternoon.

Monday afternoon, February 18, 1902, at 1:30 o'clock in the afternoon all parties appeared, represented by the same counsel, and the following proceedings were had, to-wit:

JAMES J. HILL, recalled for further examination by Mr.
287 Lancaster, testified as follows:

Q. Mr. Hill, I will ask you if the following gentlemen were directors on the 30th day of December, 1901, of the Chicago, Burlington and Quincy Railroad Company: C. E. Perkins, F. W. Hunnewell, J. Malcolm Forbes, James J. Hill, J. N. Hill, Norman B. Rean, Robert Bacon, E. H. Harriman, Jacob Schiff, George J. Gould, and H. McK. Twombly?

A. There are some names that I feel sure are members, but there are others I am not clear about. It is a matter of recollection. I had not charged my mind with them.

Mr. Lancaster. May this be taken?

288 A. The actual directors can be ascertained.

Q. Certainly, Mr. Hill, but we want to get this in the record, and may this be taken as your recollection of the directors subject to any correction that Mr. Grover may make?

A. I would rather undertake to furnish a list of the directors.

Q. If you will furnish a list that is all right, Mr. Hill; we 289
would be glad to have it that way, only we want it in the record.

A. I would be very glad to furnish the list.

Q. Mr. Hill, let me ask you if, on and prior to December 30, 1901, you were a director of the railroad company?

A. Yes, sir.

Q. And your son, J. N. Hill, was also a director?

A. I think he was.

Q. And who else of the list are you sure of and can you mention some? 290

A. I think Mr. Perkins, Mr. Forbes, and Mr. Hunnewell.

Q. And are those the only ones you are now sure of?

Mr. Bacon. Harriman, are you sure of him?

A. Not sure.

Q. Well, we don't care to waste any time on that because, as you say, it is a matter that can be easily determined.

Mr. Lancaster. I will offer in evidence Exhibit 5, this map, Mr. Kellogg.

Mr. Kellogg. Subject to the objection as to its materiality and relevancy. The map may be received in evidence as the railroad commissioners' map of Minnesota of 1901. There is 291
such a railroad map published by the railway commission of Minnesota.

Mr. Lancaster. And to save any time going over this with Mr. Hill or any other witnesses, the notations as to the different roads, the colors by which they are indicated, that may be taken?

Mr. Kellogg. Subject to any corrections that we may wish to make hereafter, the notations of the different roads with the colors as shown on the map may be taken as correct?

A. I think they are. I have looked them over, but I do not remember. 292

Q. Mr. Hill, I barely touched a matter in connection with the Burlington that I want to clear up a little, at least, in my own mind. Is it a fact that some time in the fall of 1900, or early winter of 1901, the Northern Pacific and Great Northern made an attempt or an effort to buy up stock of the Burlington Railroad, independent of any negotiations with the directors of that railroad?

293 A. They never made any effort or attempt to buy the stock of the Burlington road jointly, and I can speak for the Great Northern, it never made any attempt, or was ever concerned in any attempt to buy it, directly or indirectly, outside of the negotiations that were carried on and completed through the executive committee of the Burlington road.

Q. Had any attempt, to your knowledge, been made in the fall of 1900, or early winter of 1901, to buy up the stock of the Burlington Railroad Company, independent of negotiations with the directors of that railroad?

294 A. Not by the Great Northern or jointly with the Northern Pacific.

Q. Had any attempt by any other road to your knowledge been made?

Mr. Kellogg. I do not see how that is material to this inquiry at all. If you gentlemen want to ask questions of that kind you can wander around, unless the witness refuses to answer, but we object to it, because it certainly is not material. What other roads have been doing has nothing to do with this inquiry or the issue in this case.

Q. Will you answer that, Mr. Hill?

295 A. My knowledge is based on what the parties who made the attempt told me.

Mr. Kellogg. That certainly is not material.

A. It is not.

Q. Who were the parties, Mr. Hill?

A. I got that information in confidence, and unless I am compelled to answer it I would prefer not to.

Mr. Kellogg. It is certainly hearsay, and you do not want to pursue hearsay testimony, Mr. Lancaster, as a lawyer.

Q. Now, Mr. Hill, do you want to be understood as declining to answer that question?

296 Mr. Kellogg. No objection to your answering it at all, if these gentlemen want to pursue that sort of inquiry.

A. The question is who gave me the information?

Q. Who the parties were.

Mr. Kellogg. There is nothing to conceal about it.

Q. Who the parties were that made the attempt to buy up the Burlington Railroad?

A. The particular party, or the party who gave me the 297
information, rather, represented that he was the particular party. His name is Jacob H. Schiff, of the firm of Kuhn, Loeb & Co., in behalf of the Union Pacific interests. I won't undertake to say it was for the Union Pacific, but it would be for the Union Pacific interests.

Mr. Kellogg. There is no objection to you gentlemen having answers to any questions, but I supposed you were lawyers enough not to go into the subject of hearsay. If you are not, go ahead.

Mr. Lancaster. Mr. Kellogg, we shall not attempt to go 298
outside of what we think are legitimate issues in this case.

Q. At the time of your opening negotiations on behalf of the Great Northern Railway Company and J. Pierpont Morgan, representing the Northern Pacific Railway Company, for the purchase of Burlington stock, had you learned that some $8,000,000 or $9,000,000 out of $108,000,000 or $109,000,000 of the Burlington stock had been acquired by parties supposed to be representing the Union Pacific?

A. My understanding was that it had been acquired and principally all, if not all, of it had been sold by them, because they found that they could not get control of the Burlington 299
Railroad Company by purchasing the stock in the market at any price they were willing to pay.

Q. And it was after you had acquired that information, Mr. Hill, with reference to the attempted purchase from the stockholders of the stock in the Burlington that you, in connection with the Northern Pacific, commenced or opened your negotiations directly with the directors or trustees of the Burlington Railroad Company.

A. I am not sure whether that information came to me in the first instance before or after. I cannot recall that. I know it did after we had taken up negotiations with the 300
executive committee of the Burlington.

Q. Then the fact is, Mr. Hill, that neither you individually or as representing the Great Northern nor the Northern Pacific, to your knowledge, had made any attempt to buy this stock in the open market or individually—that is, from the individual stockholders—previous to your opening negotiations with the directors?

301 A. We had not made any attempt directly or indirectly in one way or another, and further than that, when the matter was so far advanced as to be taken up with the representatives of the Burlington Railroad Company, it was expressly understood by Mr. Morgan and myself that no one should buy, either of his people or any of my associates should buy, any stock of the Burlington Railroad Company for themselves, and certainly not for the company; not even for themselves to operate in it. That understanding was clear and explicit, and I believe it was carried out.

302 Q. Mr. Hill, why did you go to the trustees of the Burlington Railroad Company to purchase this stock instead of attempting to purchase it in the market or otherwise?

A. I knew that the stock of the Burlington company was held by people for many years; some who had inherited it, and it would be an impossibility to buy control of it except through the recommendation and co-operation of the Burlington trustees. They were men whom I had known for several years, and I knew something of the situation of the Burlington company.

Q. And you knew at that time, I presume, of the failure of
303 the Union Pacific's interests to acquire any considerable amount of stock in the open market?

A. I knew it either at that time or afterwards, or possibly both before and after.

Q. Did the Union Pacific, or anybody representing the Union Pacific, at or about the time you opened negotiations with the trustees or directors of the Burlington Railroad Company, request or seek to be allowed into the deal of purchasing the Burlington?

A. About the time that the Burlington people and representatives of the Northern Pacific and myself had arrived at
304 an understanding in regard to the Burlington property, matters were so far advanced that Mr. Baker, in behalf of the Northern Pacific, and myself were going to Boston, and we were requested by two members of what had been the Union Pacific reorganization committee, or acting for the Union Pacific people, to be allowed to join in the purchase.

Q. Will you give us the names of those individuals, Mr. Hill?

A. One was Mr. Schiff and the other Mr. Harriman. 305

Q. And about what time in 1901 was this?

A. Oh, it might have been early in March.

Q. March, 1901?

A. As near as I could testify; it is a matter of recollection.

Q. You refer to Mr. Schiff and Mr. Harriman; you mean Jacob Schiff and E. H. Harriman?

A. Yes, sir.

Q. At the time of your negotiating with the trustees or directors of the Burlington Railroad Company, did the Union Pacific, to your knowledge, own or hold in the neighborhood 306 of eight or nine millions of Burlington stock?

A. I wasn't aware that they held any.

Q. You do not understand, Mr. Hill, that they owned any at that time?

A. No, sir; I understood that they had bought some eight or nine millions, possibly more, and that they had sold it some time previous.

Mr. Kellogg. Do you mean the railroad company?

A. I mean those who represent the railroad company.

Q. I suppose in this connection, then, you mean Jacob H. 307 Schiff and E. H. Harriman?

A. My information largely came from Mr. Schiff.

Q. Well, do you know, Mr. Hill, of your own knowledge, whether that stock was turned in to your purchase by those people?

A. I don't know that they turned in anything.

Q. Well, do you know that they did not turn it in?

A. I don't recollect their name being concerned in the list of Burlington shareholders at any time. However, I am not very familiar with that list.

Q. The request of Mr. Schiff and Mr. Harriman on behalf 308 of the Union Pacific, as you understood it, was refused, was it?

A. I didn't testify that it was on behalf of the Union Pacific; but I said they had represented the Union Pacific in the reorganization committee; they were working in connection with the Union Pacific, and I don't undertake to testify, and I could not testify, as to whether they said they were

309 acting for the Union Pacific or for themselves, or other interests friendly to the Union Pacific.

Q. Well, was their request, Mr. Hill, to purchase a one-third interest—that is, an equitable share—with the Great Northern and Northern Pacific Railway?

A. That is my recollection.

Q. And that request on your part was refused, was it?

A. Yes, sir.

Q. Now, at that time—this was some time, I understood you to say, probably, in March, 1901—at that time did the
310 Great Northern Railway Company own any stock in the Northern Pacific Railway Company?

A. The Great Northern never owned any stock in the Northern Pacific Railway Company.

Q. At that time did you, individually, own stock in the Northern Pacific Railway Company?

A. Yes, sir; I had been a stockholder of the Northern Pacific for a great many years.

Q. About how many shares, par value? What was the amount of your holdings at that time, Mr. Hill, in March, 1901?

311 A. Oh, it is difficult for me to recall the amount; somewhere from sixty to seventy thousand shares. Later it was something over seventy.

Q. That is six to seven millions, par value, in amount?

A. Yes.

Q. Now, at that time, in March, 1901, of your own knowledge, did the Union Pacific or the Oregon Short Line, or any parties representing those two railroad companies, own or hold any stock in the Northern Pacific?

A. Not to my knowledge.

Q. Later on, in the spring of 1901, you did learn that large
312 holdings of Northern Pacific stock were held by what is known as the Union Pacific interests, did you not?

A. Yes; they told me that they had bought a substantial control.

Q. About what time, Mr. Hill, did you learn of the large holdings of the Union Pacific or the Oregon Short Line?

A. Early in May, is my best recollection.

Q. Now, between March and the 1st day of May, 1901, had 313
you and others representing the Great Northern and J. Pierpont Morgan & Co., and perhaps others representing the Northern Pacific, been buying up stock in the Northern Pacific?

A. I had not. I don't know that anyone else did, for Mr. Morgan or for the gentlemen you have named.

Q. On or about the 1st of May, Mr. Hill, in 1901, did you and your associates own large blocks of the common and preferred stock of the Northern Pacific?

A. Myself and associates owned large blocks for practically 314
ever since the road was reorganized. That amount changed from time to time; some continued as holders, and some of them reduced, and possibly sold out.

Q. On or about the 1st of May, 1901, can you give us approximately the amount of stock which you and your associates held of the preferred stock of the Northern Pacific?

A. I couldn't give the amount of preferred, because I never charged my mind with the amount of preferred. It was stock that could be redeemed, and in a matter of the control of the railroad it wasn't considered as essential to the control as the common stock was. 315

Q. Mr. Hill, in the spring of 1901, there was outstanding eighty millions par value of the common stock of the Northern Pacific.

A. That is correct.

Q. And there was outstanding at the same time, seventy-five millions of the preferred stock of the Northern Pacific?

A. Yes.

Q. Now, on or about the 1st day of May, 1901, how much stock par value did you and your associates hold?

A. It would be difficult for me to answer that question specifically, because there was great activity on the part of 316
Kuhn, Loeb & Co., or those who were buying the stock in the market, and some of my friends sold their stock, and the 1st of May I would be unable to answer, but say about the 7th or 8th of May.

Q. Well?

A. I should think myself and friends controlled somewhere from seventeen and a half to twenty millions.

317 Q. That is of the common?

A. Of the common; that did not include what was held by Messrs. Morgan & Co.

Q. On and prior to May 7, 1901, how much stock par value did you and your associates hold in the Northern Pacific, that is, of the common stock?

A. I should say in the neighborhood of eighteen or twenty millions.

Q. And on or about that time, how much of the common stock of the Northern Pacific did J. Pierpont Morgan & Co. hold?

318 A. Seven or eight millions; they held or controlled it. I don't know how much they held; they held or controlled seven or eight millions.

Q. And subsequent to that time, May 7, and before May 9, did J. Pierpont Morgan & Co., or did you and your associates acquire further Northern Pacific common?

A. The members of the firm asked me if myself and friends would hold the stock and not sell out. I told them we would, and they went into the market and bought some fifteen or sixteen millions. I think they bought it, my recollection is, on

319 Saturday and Monday prior to the 9th of May. On the 9th of May there was a good-sized panic in New York, and I think they bought it on Saturday and Monday prior to that time—bought it in London and New York.

Q. Then, prior to the morning of May 9, Mr. Hill, you and your associates, J. Pierpont Morgan & Co. and other associates, held somewhat exceeding forty-two millions par value?

A. Something less than forty-two; in that neighborhood.

Q. But more than forty?

A. More than forty-one.

Q. More than forty-one million par value of the common

320 stock of the Northern Pacific?

A. Yes, sir.

Q. Mr. Hill, Mr. Grover suggests that the reporter did not take down your definition of your associates; now you may state that.

A. When I speak of my associates I mean those who have been interested with me in Great Northern matters, or those who were interested with me in the purchase of the large

block of Northern Pacific stock which I bought from the reor- 321
ganization committee.

Q. Now, will you give us the names of those, Mr. Hill?

A. It would be difficult to give the names; I can give some.

Q. Give what readily occurs to your mind.

A. John S. Kennedy, D. Willis James, Samuel Thorne, J. W. Sterling, Oliver Payne, Jacob Schiff, Henry W. Cannon, Lord Strathcona, Lord Mount Stephen. Well, there might have been others, but I think that substantially covers it.

Q. Mr. Hill, shortly before—say between the 5th of May and the morning of the 9th of May—had you learned that 322
what we may call the Union Pacific interests had acquired about seventy-eight millions of the common and preferred stock of the Northern Pacific?

A. I understood, on authority that I thought should know, that they had acquired something over sixty; somewhere in the neighborhood of sixty or sixty-five millions.

Q. How was that divided, Mr. Hill?

A. I don't know.

Q. Did you subsequently learn that Mr. Harriman, representing the Union Pacific interests, had acquired about seventy-eight millions—not confining you to those dates, did you 323
subsequently learn that—seventy-eight millions of the common and preferred?

A. I understand Kuhn, Loeb & Co. had acquired it.

Q. Did Kuhn, Loeb & Co. represent Mr. Harriman?

A. That I don't know.

Q. Did you understand that Kuhn, Loeb & Co. represented the Union Pacific interests?

A. I understood afterwards that they represented the Oregon Short Line.

Q. Well, as a matter of fact, the Oregon Short Line is owned and controlled by the Union Pacific. 324

A. I think so.

Q. And was at that time, Mr. Hill?

A. I think so and so understood.

Q. Subsequent, then, to May 9, 1901, did you learn that Kuhn, Loeb & Co., representing what we may call the Union Pacific interests, held about forty-six millions par value of the preferred stock of the Northern Pacific?

325 A. About forty-one.

Q. And also held at the same time about thirty-seven millions of the common?

A. That is correct.

Q. When, or about when, Mr. Hill, did you first learn the amount of the holding on the part of Kuhn, Loeb & Co. as to common and preferred stock?

A. I could not testify as to when, except that my knowing what myself and friends held, and what Morgan & Co. held, either for themselves or clients—the total outstanding that was not held by those whom I could clearly indicate or iden-
326 tify would leave the other stock as outstanding stock.

Q. Just a process of arithmetic, then?

A. That is the best information I think we had until the other people stated what they had.

Q. That is what I was going to get at, Mr. Hill, in the next question. Did there come a time subsequent to May 9, 1901, when there was, so to speak, a show down of the holdings on the part of Kuhn, Loeb & Co. and on the part of yourself and J. Pierpont Morgan?

A. No.

327 Q. Was there a conference or meeting between you and J. Pierpont Morgan & Co. and Kuhn, Loeb & Co., or anybody representing them?

A. There might have been more than one meeting. Possibly there were several meetings. There was a very strained financial condition; people were failing and the trouble was very great. Something had occurred that never had happened in New York before—an attempt to buy a control of one hundred and fifty-five millions of stock on the market, and the high price caused people to sell stock they did not own. The bankers and financial men of every description were deeply inter-
328 ested, not only in New York, but in London, and in financial centers on the Continent, and the result was, I think, maybe two or three meetings. I know certainly there was one between the bankers at that time. The Union Pacific people claimed that they had the control by the ownership of a majority of the stock of the Northern Pacific Railroad; that wasn't conceded by Messrs. Bacon and I think Mr. Steele—Mr. Robert Bacon and Mr. Steele—because they knew they held,

as long as myself and friends held our stock, a majority of the 329
common stock which would control the property. They made an agreement that as far as the election of the directors was concerned they would leave it to Mr. Morgan to name the directors, and that was done.

Q. That is getting a little ahead, Mr. Hill.

A. Well, that is the meeting; maybe I have answered a little more.

Q. A little more, but that is all right.

A. It is a part of the whole truth.

Q. Now, Mr. Hill, the common and preferred stock was both 330
voting stock, was it not, in the Northern Pacific?

A. Yes, sir.

Q. And since the preferred stock was outstanding, it participated equally with the common stock in all stockholders' meetings?

A. Yes, sir.

Q. At the time of these conferences, or conference, that you speak of, did Mr. Harriman attend those meetings—one or more?

A. The one that I have particularly in mind—I have an impression there was more than one, possibly more than two 331
—but the one I have particularly in mind occurred in Mr. Harriman's office.

Q. Now, Mr. Hill, at that meeting did Mr. Harriman claim or did he state to you gentlemen precisely how much stock he held—he or his interests or his associates held—in the Northern Pacific?

A. Not while I was there; not to me.

Q. Well, was there any claim made by him, or by others representing him, in any of those conferences previous to the time when you agreed upon J. Pierpont Morgan as the arbitrator to name the board. Did he make a claim as to the amount 332
or approximately the amount, of stock, both common and preferred, held by him and his associates?

A. I have not testified that I was present at more than one meeting, and there was nothing of the kind in my presence.

Q. Well, do you recall at any time previous to the selection of J. Pierpont Morgan as the arbitrator to name the board of directors for the Northern Pacific when Mr. Harriman or

333 Kuhn, Loeb & Co. indicated or expressed to you the amount of stock, common and preferred, held by them?

A. Nothing more than they always claimed to have control of the Northern Pacific.

Q. Did not there come a time, Mr. Hill, when they made the claim a show down of seventy-eight millions of common and preferred?

A. Not to me. I think, however, that I can answer your question by saying that before the annual election they had their stock transferred to their own names. Then it was prac-
334 tically apparent from the transfer books of the company what they owned. I think that was the first knowledge.

Q. And that was what time in the year?

A. I could not testify as to that.

Q. Was that before or after the selection of Mr. Morgan as the arbitrator?

A. Oh, this would be before the annual meeting.

Q. When—with reference, Mr. Hill, if you can fix the date of the annual meeting—when with reference to the selection of Mr. Morgan as the arbitrator?

A. They were pretty anxious to have the matter settled, so
335 that the world would be at peace, and they were willing to leave it to Mr. Morgan, and I think that he named that board after his return from Europe, which was in July, and their stock was transferred then or soon after. The annual meeting I think is held in October.

Q. What I want to get at, Mr. Hill, is this: If before the selection of Mr. Morgan as an arbitrator to name the board of directors of the Northern Pacific, Mr. Harriman or Kuhn, Loeb & Co., or their associates, made a show down or stated to you or your associates, to your knowledge, the amount of their holdings, both common and preferred?

336 A. I never knew their holdings of common and preferred until I got it from those who took it from the record of the Northern Pacific books.

Q. That was in October, just before the annual meeting?

A. Before the annual, or about that time.

Q. What was the total amount of their holdings at that time, both common and preferred?

A. Seventy-seven to seventy-eight millions.

Q. Now, what I want to get at is, as a matter of fact, it was more than one-half of one hundred and fifty-five millions, wasn't it, Mr. Hill? 337

A. Yes; they had a majority of all the stock.

Q. That is, they had a clear majority of one hundred and fifty-five millions?

A. Yes, sir.

Q. And it was your recollection a little less than seventy-eight millions?

A. I think a little less than seventy-eight. It might have been a hundred or a hundred or two shares more, but it was in that neighborhood. 338

Q. I say seventy-eight, because in your testimony before the board of commissioners you used that figure.

A. It was in that neighborhood.

Q. Prior to the morning of May 9, 1901, you and your associates and Mr. J. P. Morgan and his associates held a large amount of the preferred stock in the Northern Pacific, did you not?

A. Some of my associates held a considerable amount of the preferred, and some of them held less; some of them held none. I don't know whether Messrs. Morgan & Co. held any or how much. 339

Q. Are you able to state, having given us the amount of the common—are you able to state now, Mr. Hill, approximately the total amount of holdings of the preferred stock in the Northern Pacific held by you and your associates and J. Pierpont Morgan & Co. and his associates?

A. I don't remember that I held any. I don't think I held any. Some of my associates held preferred. I think I had exchanged my preferred for common some time before, and I don't know and I never did know the amount of preferred stock held by those who were of my party or the amount held by Morgan & Co. I knew that some of my friends held preferred stock. I don't know how much Messrs. Morgan & Co. held, because it cut no figure in the transaction or control of the road. 340

Q. In other words, you would be unable to state whether yourself and associates, or J. Pierpont Morgan and his associates, held ten or twenty million?

341 A. I could not give the amount at all. I didn't concern myself with the knowledge, and only gained that knowledge incidentally that they held any.

Q. At the time of the conference—there was one conference which you say you attended—between Mr. Harriman, in his office, and yourself, and I think you said a representative of J. Pierpont Morgan & Co.—at the time of that conference was it ascertained by you that yourself and associates and J. Pierpont Morgan & Co. held practically forty-two millions of the common and in the neighborhood of thirty millions or a little more of the preferred?

342 A. I never knew or heard that the question was raised as to whether they held any preferred or not. If our friends had the stock that they reported to have, we knew that we had a majority of the common stock.

Q. And you did not know whether you had a majority of the common and preferred or not?

A. We didn't pay any attention to the preferred.

Q. Well, as matters then stood, Mr. Hill, in May, 1901, the common and preferred stock together would control corporate action, wouldn't it?

343 A. Certainly; that is, it would control the election of the board. The corporate action, I think, under the Northern Pacific charter is in the hands of the directors.

Q. There may possibly be some question about that later on, Mr. Hill.

Mr. Kellogg. Up to the date, that is the decision of the court.

Q. That may be correct, but so far as the election of the board of directors was concerned, and as matters stood on May 9, 1901, it took a majority of both stocks to control an election?

344 A. As matters stood at that time, both common and preferred voted one vote for each share of stock and had to the extent of their holdings a voice in the control of the property in the election of the board.

Q. Subsequent votes, Mr. Hill, demonstrated that so far as the election of the board was concerned—that is, the right to elect a board of directors—that Mr. Harriman and Kuhn, Loeb

& Co. held a majority of both stocks, did they not? I say, subsequent votes showed that to be so? 345

A. They held a majority of both stocks of the Northern Pacific.

Mr. Kellogg. A majority of the total stock.

A. Of the total, yes. Not of each, but of the total stock.

Q. I want to know if, or at about the time—I will say at the time of the conference which you attended at Mr. Harriman's office shortly after May 9—did you or did you not know at that time whether you and your associates and J. Pierpont Morgan and his associates held a majority of both stocks, that is, taking them together? 346

A. We knew that we did not.

Q. And I understand you to testify now that you did not, as a matter of fact, know whether or not Mr. Harriman and Kuhn, Loeb & Co. held a majority of the two stocks?

A. No, we did not.

Q. You knew, however, Mr. Hill, that you and your associates and Mr. Morgan and his associates held a clear majority of the common stock at that time?

A. Yes, sir.

Q. And I understood you to say that at that conference there was no show down on the part of either faction; either you and your associates and Mr. Morgan and his associates to Mr. Harriman and his associates? 347

A. That conference was held to agree on a basis to settle a general disturbance in the financial circles of the world.

Q. But as preliminary to that, conceding that that was the object of your conference, as preliminary to that, was there or was there not a show down on the part of the two factions?

A. None that I know of. I wasn't so much interested in the market condition as others, because I had neither bought nor sold a share of stock, and I was brought into the meeting. I remember I was asked to come there, and when I came over to the office, this question was up and it lasted maybe fifteen minutes. The other people said we would let Mr. Morgan select the board. 348

Q. At that meeting. That was shortly after May 9?

A. Yes, sir.

Q. Was it within a day or two after?

349 A. I should think so; within two or three days anyway.

Q. And at that meeting the agreement was reached that Mr. Morgan should name the board of directors of the Northern Pacific Railway Company?

A. Yes, sir.

Q. That is the board to be elected at the next annual meeting?

A. Yes, it was expected, and I think notice had been given, that the board would be classified, and whether Mr. Morgan was to name the whole or a part I do not recall. I know that
350 Mr. Morgan was to name the board of directors, and I know that on his return from Europe he did.

Q. Was that agreement put in writing at that meeting?

A. I don't remember. I have a faint recollection of a typewritten memorandum—maybe it was shown to me somewhere else—just a memorandum of what was proposed.

Q. Well, did you for yourself, or acting for your associates in anyway, execute or sign any agreement?

A. I don't recall any signed agreement. When you asked me if it was in writing I remembered something of seeing a proposition, maybe it was a telegram to be transmitted to Mr.
351 Morgan; maybe that is what was in my mind.

Q. So far as your present recollection goes, Mr. Hill, do you wish to be understood as saying that you do not recollect whether there was any executed agreement; that is, any agreement that was signed by the respective parties?

A. I don't recall any.

Q. But you do recall some written proposition—that is, some typewritten agreement—that was drawn up; but whether it was executed or not you do not remember; was that it?

A. No; that is a little more than my recollection. My rec-
352 ollection is that either coming from some of the parties for consideration by the others or to be transmitted to Mr. Morgan, or a short statement covering what was proposed. Now, whether that was a cable made for transmission or whether it was a memorandum that was in the office I could not say. Now, it might be both, and I could not say which.

Q. Mr. Hill, have you any present knowledge of having in

your possession or under your control any memorandum or 353
agreement that was reached that day?

A. No; I haven't.

Q. Do you recall having signed any memorandum of agreement?

A. I don't recall.

Q. Or any memorandum executed or unexecuted since that time?

A. I don't recall more than I have testified to. I have a recollection of seeing a memorandum. Whether it was a cable or whether it was a memorandum used locally, or both, I could 354
not testify.

Q. But at that meeting, if there was any memorandum drawn up, nothing was said with reference to the respective holdings of either common or preferred by the Harriman or the Hill factions, so to speak?

A. My recollection is that there was no discussion as to the amount of stock held. I think Mr. Schiff said we control or own a majority of the Northern Pacific, and I think Mr. Bacon said, "Mr. Schiff, we do not concede that, and before you are through you will find you don't."

Q. Now, Mr. Hill, at that meeting was there anything said 355
by you or your associates, or Mr. Harriman or his associates, about the power of the corporation to retire the preferred stock?

A. I could not say as to that; I could not testify.

Q. Mr. Hill, did there come a time when you made known to Mr. Harriman the power that you held there as to the right to retire?

A. I do not recall my making that known to Mr. Harriman. I think Mr. Harriman learned that early in May. I think after they had bought some sixty or sixty-five millions they found out that they needed more common. 356

Q. Well, did they find it out, Mr. Hill, until after the 9th of May?

A. I think they must have found it out before. The market indicated rather. I have no means of knowing other than the market indications. Still, that is a matter I have no knowledge of, and possibly I ought not to give mere impressions as testimony.

357 Q. Now, Mr. Hill, whatever that agreement was with reference to allowing Mr. Morgan to name the board of directors, it was carried out at the annual meeting in October, was it not?

A. I think Mr. Morgan named the board on his return from Europe, and there were some changes in the board; that is my recollection. There were some changes in the board, and I think that parties who had been directors resigned and others took their places.

Q. Did you attend the annual meeting of the Northern Pacific?

358 A. I attended one meeting, and whether I was present at the annual meeting or not I don't quite recall. I could not testify. I attended one meeting of the board of directors, I know.

Q. Mr. Hill, were there any changes in the board of directors of the Northern Pacific between May 9 and the annual meeting in October?

A. Yes, sir.

Q. As a matter of fact, there were some resignations, were there not?

359 A. Yes; I testified to that.

Q. Now, were those resignations agreed upon between you and Mr. Harriman, or Kuhn, Loeb & Co., at this conference shortly after May 9?

A. They were not.

Q. That was brought about subsequently, was it?

A. I knew nothing about that until I saw the list of those nominated by Mr. Morgan.

Q. Then there were some resignations between May 9 and the annual meeting?

A. I think these resignations were after Mr. Morgan's re-
360 turn, some time in July.

Q. And Mr. Morgan named the parties to take the places of those who resigned, did he not?

A. That is my understanding.

Mr. Grover. That is the fact.

Q. Let me see if we can make this plain. Was there or was there not any agreement at this conference of which Mr. Morgan was appointed arbitrator with reference to naming the

present board—that is, that the personnel of that board 361
should be changed?

A. There was no agreement stipulated for retaining the board or changing the board. I remember Mr. Bacon saying if we leave it to Mr. Morgan, Mr. Morgan must have the entire power to say who shall be nominated.

Q. What I am getting at, Mr. Hill, is, was there anything said with reference to the resignations of the then board?

A. Nothing whatever that I recall, and I came away with the impression that no changes would be made until the annual meeting. 362

Q. Now, Mr. Hill, there were changes made right away, weren't there, after Mr. Morgan's return?

A. Some time after his return, or soon after his return.

Q. Can you give us the names of those directors who resigned?

A. I cannot.

Mr. Lancaster. Can you, Mr. Grover?

Mr. Grover. Not from memory. Maybe Mr. Mellen can.

Mr. Lancaster. Can you, Mr. Mellen?

Mr. Mellen. It is all in that report.

Mr. Kellogg. Mr. Mellen can give those when he goes on 363
the stand.

Mr. Lancaster. I guess that will save time.

Q. Before leaving this matter, I will ask you to give me the names as near as you can recall them, and the full names of the parties present at the conference which you say occurred two or three days after May 9.

A. The meeting might have been within two days, and my recollection is that Mr. Schiff and Mr. Harriman, Mr. Robert Bacon and Mr. Steele were present at Mr. Harriman's office when I was called in.

Q. Who represented Kuhn, Loeb & Co. at that meeting? 364

A. Mr. Schiff, a member of the firm, a senior member of the house, I think.

Q. Mr. Hill, Mr. Robert Bacon and Mr. Steele were partners of J. Pierpont Morgan & Co.?

A. Yes, sir.

Q. Mr. Harriman you understood to represent the Union Pacific and Oregon Short Line?

365 A. Well, he might have represented himself. It is difficult for me to give any more than my understanding. He represented the Union Pacific interests, or those that were concerned in buying the control of the Northern Pacific. He represented the opposition to our plans.

Q. Then you know, Mr. Hill, of your own knowledge, that the board of directors which was elected at the annual meeting in October, 1901, was nominated or named by Mr. Morgan under that agreement.

A. I know that it was left at that meeting for him to nominate the directors of the Northern Pacific.

366 Q. You mean the conference shortly after May 9?

A. Yes; that meeting at Mr. Harriman's office.

Q. And do you know that that arrangement or agreement with reference to Mr. Morgan's naming the directors of the Northern Pacific was carried out in fact?

A. I do. I have the understanding that it was carried out. There was no other board elected.

Q. Was there at that conference, Mr. Hill, any agreement among the parties to it as to the Union Pacific being represented on the board of the Northern Pacific?

367 A. There was not.

Q. No understanding with reference to that?

A. None whatever. I remember some discussion; not as to the question of Union Pacific, but as to the suggestion of some names. Mr. Bacon said he would not consider it at all on any other basis than that Mr. Morgan shall nominate the board, and if you are willing that he shall nominate the board we will agree to it.

Q. When you say there was some suggestion made with reference to the directors, do you mean to say that Mr. Harriman or Mr. Schiff insisted?

368 A. I think that they named, or gave some names, or suggested some names, and they were refused.

Q. And the final agreement, then, was that Mr. J. Pierpont Morgan should have the right and power to absolutely name the board of directors of the Northern Pacific.

A. That was the understanding, or the conclusion arrived at. It hardly took the form of a final agreement.

Q. Well, you broke up with that understanding, didn't you?

A. Yes, that is right; and I think it was practically carried out on that line, and the disturbance on the street adjusted itself very quickly. 369

Q. What gave rise, Mr. Hill, to leaving this matter with Mr. Morgan?

A. I don't know.

Q. What subject was under discussion between you gentlemen that led up to that?

A. The subject under discussion as I testified before was mainly between the bankers on account of the strained condition of the situation in the money markets of the world.

Q. Wasn't the matter that was under discussion between you gentlemen that led up to the appointment of Mr. Morgan as arbitrator the respective claims as to the control of the Northern Pacific? 370

A. No; the thing that led up to that was the bankers' anxiety to allay this terrible condition and they wanted to know how it might be done, and as I understand it, the other people waived their control; said we will leave the matter to Mr. Morgan and let him name the board of directors, and we will vote for them or send a proxy.

Q. Mr. Hill, the cause of the bidding up of the common stock on May 9; what caused that stock to be bid up was the anxiety and desire of the two factions to get control of the common stock of the Northern Pacific? 371

A. I don't consider it so at all.

Q. Mr. Hill, on the morning of May 9 you and your associates held par value about forty-two millions of the common stock of the Northern Pacific; that is, you and your associates and J. Pierpont Morgan and his associates?

A. Do you ask me if we held them?

Q. Yes; we have already been over that.

A. Well, my recollection is that on the 7th of May the stock controlled by Messrs. Morgan & Co. prior to the 1st of May, added to what they had bought between the 1st of May and the 7th, with what myself and friends held, made about forty-one millions of the common stock, or a clear majority of the common stock. The extreme pressure on May 9 was certainly greatly aggravated by the short selling; people selling stock who hadn't got it, and others sold stock—for instance, share- 372

373 holders in Tacoma and here in St. Paul and Minneapolis, and in St. Louis and Louisville, and in New Orleans and other cities throughout the country where they held the stock. They wanted it sold, but they couldn't deliver it that day, and for several days, and that made the extreme high prices.

Q. Now, Mr. Hill, under the agreement which you and your associates had with Mr. Morgan and his associates——

A. We had no agreement.

Q. You were not at liberty to sell any common stock, were you?

374 A. We had no agreement.

Q. I understood you to say a little while ago that you had an agreement with Mr. Morgan that you wouldn't sell.

A. No; I simply said that myself and friends would hold. I remember the word I used, because they repeated it afterwards. I said myself and friends would stand without hitching, and we did.

Q. Mr. Hill, you intended that, when you said that to Mr. Morgan, that you would stand without hitching—you meant that you and your friends would not deliver common stock.

A. Wouldn't sell a share of common stock. Now, I deliv-
375 ered mine to people who had sold it, and couldn't make the deliveries and had the stock. I remember banks and friends telegraphing me.

Q. That is, they had it, but they didn't have it in New York?

A. They would get some local banker or somebody to certify that it was mailed by express to me, and will you make a delivery? Well, I don't remember how I did, but I arranged to get several people out of trouble that way.

Q. I don't want to take up much time on this, Mr. Hill, but I do want to make this clear. The practical effect of your agreement with Mr. Morgan was that you and your associates,
376 and Mr. Morgan and his associates, would stand together and not deliver any of your forty-one millions of common stock.

A. We wouldn't sell it; wouldn't part with it.

Q. And when you say you did deliver some, you merely exchanged it with others who had stock, but not in New York at that time.

A. That would be returned in a day or two.

Q. Inasmuch as you had it and knew it could be delivered

later on, it answered your purpose and you were willing to 377
loan them stock in exchange?

A. Well, that amounted to probably 300 or 500 shares; it amounted to very little.

Q. The panic, then, of May 9 was due to the fact that practically all of the common stock of the Northern Pacific was held by parties who wouldn't sell and deliver; was that it? And, of course, in connection with that, Mr. Hill, the fact that parties had sold short?

A. There was very high prices offered for the stock; very high prices offered, and led people to make sales, thinking 378
that they could cover—or I don't know what they thought. They at least felt that they would like to sell Northern Pacific at that, and it was sold and they couldn't deliver. The purchasers settled at $1.50.

Q. Mr. Hill, some days previous, perhaps weeks previous to May 9, was it or was it not pretty well understood in New York that there was a contest for the control of the Northern Pacific on between what we may call the Hill faction and the Harriman faction?

A. No, sir; there was no understanding of the kind; quite the contrary. 379

Q. Well, Mr. Hill, I will ask you this——

A. For the purpose of showing what I know, it was quite the contrary——

Q. I have no objection to your explaining.

A. I arrived in New York about the 1st of May. I think I am right in saying that on Thursday, the 2d of May, the Northern Pacific treasury—or not Northern Pacific treasury, but rather the treasurer of one of its companies, one of its proprietary lines—sold quite a block of Northern Pacific common, maybe 7,000 or 8,000 or 10,000 shares.

Mr. Mellen. Thirteen thousand. 380

A. Thirteen thousand. Well, I knew it was something. They sold it. If the contest between Morgan & Co. commenced on Saturday, they sold it on the previous Thursday; so they didn't know that there was any contest or they wouldn't have sold it and commenced buying it back on Saturday.

381 Q. It is true that it was given out in the public newspapers for a week or ten days before May 9 that there was a contest on between the two factions.

A. I don't recall it, but then I pay very little attention to newspapers; don't read them very often. A great many things are inspired in the newspapers that you have to take with a great deal of salt.

Q. Mr. Hill, I am not quite clear as to what your testimony was about Mr. J. Pierpont Morgan's purchase of the common stock just before May 9. How long before May 9 was it that
382 J. Pierpont Morgan & Co. bought some fifteen or sixteen millions of the common?

A. I think between the 4th and the 6th or 7th. That is my best recollection.

Q. Now, come down, Mr. Hill, to the directors' meeting after the annual election at which a resolution was passed to retire the preferred stock; do you remember the date of that?

A. I think it was the 13th.

Mr. Grover. November 13.

Q. Did you attend that meeting?

A. I attended a meeting on the 13th of November. I spent
383 most of the time, if not all of the time, in a room adjoining the board room. I was in conversation with Mr. Harriman about some matters, and I think at the time that the meeting was held—it was a short one—most of the time I spent in a room adjoining the board room. I was present and answered roll call at the meeting. Perhaps that would answer your question better.

Q. That is, you answered the roll call of the directors' meeting on November 13?

A. Yes, sir.

Q. When did the retirement of the Northern Pacific pre-
384 ferred stock come up between you and your associates and J. Pierpont Morgan & Co. and their associates?

A. I don't know when it was first mentioned. It was always understood from the time of the reorganization that the preferred stock would be retired and that there would be one kind of stock.

Q. But what I mean is after, say May 9, was there any definite plan between you and your associates and J. Pierpont

Morgan & Co. with reference to the retirement of the pre- 385
ferred stock?

A. Previous to May 9. I think that between May 1 and the time they made up their minds to buy the control of the common that it was decided to exercise that privilege.

Q. And that was decided upon between you and your associates and J. Pierpont Morgan & Co.?

A. No; they simply said that that could be done, and they would do it. They wouldn't hand over control of the property. Mr. Morgan had a good deal of feeling that the Northern Pacific had been a difficult property to keep on its feet and get it on its feet. His name was connected with it, and he had a 386
good deal of pride in not handing it over to a rival.

Q. When you speak of a rival, do you mean the Union Pa- interests?

A. The interests of the Union Pacific.

Q. And the matter then was definitely determined upon that you had a right to retire the preferred stock?

A. That the Northern Pacific had.

Q. Of course you mean the company had a right to retire the preferred stock?

A. Yes, sir. 387

Q. And having a complete majority of the common stock that would give you and your associates and Mr. Morgan and his associates complete control of the Northern Pacific?

A. Of the Northern Pacific through a majority of the common stock.

Q. Yes; that is what I mean.

A. And the Great Northern had a very direct interest in knowing that it was not—that the control of the Northern Pacific was not—going to be vested in the friends of the Union Pacific, because if that was the case the Northern Pacific owning one-half the control of the Burlington, with the 388
control of the Northern Pacific in the hands of the Union Pacific, the Great Northern would have had to go into the hands of the Union Pacific.

Q. Now, Mr. Hill, when subsequent to this determination to retire the preferred stock was it definitely decided upon to retire?

A. Oh, before myself and friends would agree to hold our

389 Northern Pacific we had the promise of Messrs Morgan & Co. that the preferred stock would be retired.

Q. And that was shortly before May 9?

A. Yes, sir.

Q. And probably before May 1, was it not, Mr. Hill?

A. No, sir.

Q. Between May 1 and May 9?

A. Between May 1 and May 9. It was between the time that Kuhn, Loeb & Co. interests attempted purchasing the Northern Pacific stock in a large way, or claiming control of it, and the time that Morgan & Co. bought.

390 Q. So that when at the time you told Mr. Morgan that you and your associates would hold your Northern Pacific common, Mr. Morgan and you then and there agreed that you would retire eventually—that is, as soon as convenient—the preferred stock of the Northern Pacific?

A. I couldn't agree to retire that.

Q. Well, you and Mr. Morgan had that understanding that it should be done?

A. Mr. Morgan was abroad. His partners were at home and I stated to them, if you will retire that preferred stock under the conditions under which it was issued, we will not

391 sell our stock; we will co-operate with you.

Q. And it was upon that agreement and understanding that you continued to hold—you and your associates—to hold your common stock?

A. As I testified before, it was a very important matter to the Great Northern. It was a question whether we controlled our property or whether the Union Pacific controlled it through the Burlington and the Northern Pacific. If that stock had not been redeemed, and the Union Pacific control the Northern Pacific and half the Burlington, they would very

392 soon control the Great Northern.

Q. Mr. Hill, I suppose you refer now to the provisions of the collateral mortgage—the joint bond?

A. No. If one-half the stock of the Burlington belonged to the Northern Pacific and the Union Pacific controlled the Northern Pacific, the Great Northern could not depend on the Burlington down in Union Pacific territory as an ally in any contest, and the Union Pacific could have kept——

Q. If you want to explain this, it is all satisfactory, but 393
we don't want it to go into our case.

A. No. I thought I was answering your question.

Mr. Lancaster. I move to strike out the voluntary statements of Mr. Hill as not being responsive to any questions asked by complainant.

A. Well, what is the question?

Q. There isn't any question. I was trying to frame one when you started on that explanation. Now, when was the matter of the retirement—that is, when were the first steps taken to actually retire the preferred stock of the Northern 394
Pacific—when was that?

A. The first that I knew were at the meeting when the notice was given, when a resolution to retire it was passed, and to give the necessary notice.

Q. About what time?

A. That, I think, was on the 13th of November.

Q. Now, Mr. Hill, previous to the 13th of November, had not you and your associates and Mr. J. Pierpont Morgan & Co. discussed the ways and means of retiring the preferred stock?

A. I couldn't testify accurately as to that. 395

Q. Well, could you testify that previous to the passage of the resolution to retire the preferred stock, which was on November 13, 1901, no arrangements or agreements had been made between you and J. Pierpont Morgan & Co. with reference to carrying out the plan of retirement?

A. The agreement was not made between Mr. Morgan and myself at any time. The fact that it was necessary to raise a large amount of money was more or less discussed possibly before, certainly after that date, but my impression is that the plan as subsequently carried out was discussed both before and after. Remember there were other shareholders be- 396
sides myself, and they spoke for themselves.

Q. Now, Mr. Hill, previous to November 13, 1901, which was the day on which the meeting of the board of directors of the Northern Pacific was held at which the resolution was passed to give notice with reference to the retirement on the 1st day of January, 1901, of the preferred stock? You understand

397 that that was the meeting at which such a resolution was passed?

A. Yes, sir.

Q. Now, I want to know if prior to November 13, 1901, a complete plan and scheme had been devised by you and your associates and by J. Pierpont Morgan & Co. so as to provide the money to retire the preferred stock of the Northern Pacific?

A. I think that the entire plan was provided by the board of directors and some of the principal stockholders. I know
398 many of the stockholders were allowed to take their share of the securities.

Q. When was that done?

A. When was the plan agreed upon?

Q. When was this plan matured?

A. It was matured prior to the 13th of November.

Q. About how long before?

A. Oh, I couldn't say; maybe ten days or two weeks.

Q. Now, had not the plan of organizing the Northern Securities Company been definitely decided upon prior to November 13, 1901?

399 A. The plan of organizing the Securities company was decided upon a very long time before—two or three years before.

Q. Then you had not at that time, November 13, 1901, arranged so that the retirement of the Northern Pacific stock in the end would be taken care of by the Securities company?

A. No, sir.

Q. Well, any arrangements with reference to that, were they made subsequent to November 13?

A. The Securities company purchased Northern Pacific stock. The Northern Pacific preferred stock was retired by the sale of a bond, and that bond was convertible into stock.
400 I think that was a matter—the whole subject is one of recollection on my part, but you can get the actual transaction, and it would be a great deal better than my recollection.

Q. Well, that may possibly be so, Mr. Hill, but I want to get at the general features of this transaction.

A. Yes, sir.

Q. Had you prior to November 13, 1901, any arrangement, agreement or understanding with Mr. Harriman, or of any-

one representing his interest or the interests of the Union 401
Pacific Railway Company, with reference to the taking care of the preferred stock of the Northern Pacific held by him, or the Union Pacific, or the Oregon Short Line?

A. I had no such arrangement with Mr. Harriman or any one else before or after.

Q. To your knowledge, was there any arrangement or agreement or understanding with reference to the retirement of this stock; that is, as to how it should be retired, and how it should be taken care of by any one representing the Northern Pacific or Great Northern or J. Pierpont Morgan & Co.? 402

A. I had nothing to do with it and know nothing about it. It could only be retired the same as another stock. I don't know any difference between his stock and any other.

Q. What I want to get at is this: The stock was retired on the 1st day of January, 1902, by a delivery of the stock at J. Pierpont Morgan & Co.'s office and taking the cash par value of the same, was it not?

A. I don't know.

Q. Well, was not that the effect of the resolution?

A. I don't remember the terms of the resolution.

Mr. Boutelle. Don't the pleadings admit that now? 403

Mr. Kellogg. I think the pleadings state definitely just what was done in detail.

Q. In order to provide for the cash to retire the preferred stock, the Northern Pacific issued seventy-five millions of certificates of indebtedness, did it not?

A. That is my recollection.

Q. The subscriptions for the whole of the seventy-five millions of certificates of indebtedness were actually subscribed for by yourself and others previous to the meeting on November 13, 1901?

A. My understanding and recollection is that each holder 404
of common stock prior to the 1st of January, at the time when the books closed, was entitled to subscribe for seventy-five-eightieths of his holdings of common stock in debentures or certificates issued by the Northern Pacific and to pay for the same at par. Now, that is my recollection.

Q. Well, Mr. Hill, before we get to that, what I want to get at is that primarily this preferred stock was to be paid in

405 cash; that is, you had to provide a fund to pay that stock when it was tendered to J. Pierpont Morgan & Co., on the 1st day of January, 1902?

A. Yes, sir; certainly.

Q. Now, some provision had to be made in order to provide for that amount of cash, $75,000,000. Now, is it not a fact that prior to the passage of the resolution retiring this stock, which took place on November 13, 1901, Kuhn, Loeb & Co., J. P. Morgan & Co., James J. Hill, George F. Baker, and John S. Kennedy had subscribed for seventy-five millions?

406 A. No. That is simply an underwriting agreement under which the gentlemen signing it agree to take the $75,000,000, because the parties who had agreed to buy any of these securities that were for sale wanted to know that it would be subscribed for. And that is not an uncommon practice. It is rather a common practice. It is what they call "underwriting." My recollection is that of that $75,000,000 that the underwriting party agreed to take, that they got somewhere from six to seven hundred thousand of it.

Q. What I am getting at is this: That prior to November 13, 1901, Kuhn, Loeb & Co., J. Pierpont Morgan & Co., James
407 J. Hill, George F. Baker, and John S. Kennedy became obligated to the Standard Trust Company of New York for seventy-five milions; that is, to take $75,000,000 par value of the certificates of indebtedness to be issued by the Northern Pacific?

A. When Mr. Kennedy and myself signed that underwriting it was generally considered a matter of form, and Kuhn, Loeb & Co.'s name was not mentioned in connection with it.

Q. Well, I am asking you as to what was actually done?

A. I am trying to answer your question.

Q. Mr. Hill, I want to know if it is not true that previous
408 to November 13, 1901, Kuhn, Loeb & Co., J. Pierpont Morgan & Co., James J. Hill, George F. Baker, and John S. Kennedy had been in fact obligated to this Standard Trust Company of New York to take seventy-five millions of the certificates of indebtedness of the Northern Pacific which were to be issued to take up and retire the preferred stock of that company?

Mr. Kellogg. I think I will object to that. That agreement is in writing and attached to the pleadings and you are asking

Mr. Hill for his recollection of it. The writing is the best 409
evidence and you know it.

A. My recollection of that agreement or the signing of it, was that it was a mere formal affair, and that it would in all probability carry no stock. It was something the trust company asked to have done. I know that when I signed it it was considered that but a very small amount, if any, of the stock, or rather of the certificates of indebtedness would come to the underwriters, and as to the date when it was signed, whether it was before or after the 13th I could not testify. I should say it was some time after the 13th and I may be wrong. It 410
is my recollection. The paper would be a great deal better.

Q. I don't want to mislead you. It says the 15th. The agreement itself attached to the answer says the 15th, which I presume is correct?

A. My recollection is that it was after the 13th.

Q. What I am getting at, Mr. Hill, is this: I don't want to haggle about the date—whether or not, previous to the passage of the resolution retiring the preferred stock you and your associates, J. Pierpont Morgan & Co. and their associates and perhaps Kuhn, Loeb & Co., or Mr. Harriman, had not talked over the necessity of providing $75,000,000 to retire the 411
preferred stock?

A. As far as the $75,000,000 to retire the preferred stock was concerned, I have no recollection whatever. I think I would have a clear recollection if there had been any such understanding with Kuhn, Loeb & Co. or Mr. Harriman in any way or manner whatever. The retirement of that stock was not a matter newly considered. The parties knew from early May that it had to be retired or the Northern Pacific would have to pass into the control of the southern people. The proposition was made to some extent, and to a greater or less extent, to meet this amount of money and the method—the 412
issuance of certificates—I think that was more in reference—and this is only an impression—but it is a strong one—that it was with reference to the share capital. These certificates were made convertible so that it did not interfere with the amount of share capital.

Q. What I am getting at, Mr. Hill, is in the first instance

413 you had to make provision to provide, if necessary, the total amount; that is, the seventy-five millions of cash?

A. Yes, sir.

Q. In other words, under the resolution which was passed to retire the $75,000,000 on the 1st of January, 1902, every holder of a preferred share of stock had the right to present his certificates and get his money in cash, is not that true?

A. That is right.

Q. Now, in order to provide for that, you and your associates and Mr. Morgan and his associates, had talked over and
414 discussed ways and means of doing that, accomplishing that, hadn't you, previous to November 13?

A. I have tried to make it understood that the providing of that money was a matter that concerned the Northern Pacific, and the Northern Pacific had to make the provision for raising the money, and it did make it and called on its common shareholders and they responded.

Q. I understand exactly how it came about later on, but what I am getting at now is that, primarily, you had to make provision for raising $75,000,000?

A. I had not.

415 Q. But the Northern Pacific had?

A. You keep confounding me with the Northern Pacific, Judge. If you will get that out of your head you will save a lot of trouble for yourself and me, because I am all the time trying to steer clear of being confounded with people whom I had little to do with.

Q. It was necessary, Mr. Hill, to provide some way of raising, on the part of the Northern Pacific, $75,000,000 to retire the preferred stock?

A. That is correct, sir.

Q. And what I want to get at is, when was that agreed
416 upon? When was the plan of raising that money outlined and agreed upon, to your knowledge?

A. I could not testify. I do not recollect.

Q. Did you discuss with your associates or with J. Pierpont Morgan & Co., or with Kuhn, Loeb & Co., or Mr. Harriman, or anybody else, that proposition?

A. I never discussed it with Kuhn, Loeb & Co. or Mr. Harriman.

417

Q. Did you discuss it with J. Pierpont Morgan?

A. I discussed it with a great many, or with several people who were interested—stockholders, and with Messrs. Morgan & Co., and more or less with counsel.

Q. And with members of the firm of J. Pierpont Morgan & Co.?

A. With Mr. Morgan and other members of the firm.

Q. Mr. Bacon?

A. Mr. Bacon. I don't know whether the details were discussed to any great length with him. He went abroad some time in the fall.

418

Q. Did you discuss it with Mr. Steele?

A. I think so, clearly.

Q. Now, previous to November 13, 1901, had you personally any conference with the officers, or any of them, of the Standard Trust Company with reference to this matter?

A. I recall none. You mean conferences as to this raising of money?

Q. Yes, sir.

A. I recall none.

Q. Was that matter of raising the money and providing ways and means of raising the money, left to J. Pierpont Mor- 419
gan & Co. to attend to?

A. That was done by the Northern Pacific and by its officers, and what they did I don't know, except as a shareholder, that I was offered, as others were, the right to subscribe for securities.

Q. Mr. Hill, do you know what officers of the Northern Pacific negotiated the $75,000,000?

A. I think it was probably done by the executive committee.

Q. Who are the executive committee?

A. I know two of them.

420

Q. Well, give me the names of two of them.

A. George F. Baker and John S. Kennedy. Now, there are probably five.

Mr. Mellen. Six.

Q. You can't give the name of the others?

A. No; I cannot. The president is ex officio one, I think.

Q. And so far as the method or scheme or plan of raising

421 the $75,000,000 to retire the stock was concerned, you didn't have anything to do with it yourself?

A. I testified a moment ago that I had discussed it with the firm of Morgan & Co. and with counsel, and I could hardly say I had nothing to do with it. I didn't wish to be so understood.

Q. And you approved of the issuance of $75,000,000 of certificates of indebtedness on the part of the Northern Pacific?

A. I did not testify that I approved of it or disapproved of it.

Q. Well, I ask you now, Mr. Hill.

422 A. It was not a matter for me to approve or disapprove. It was a matter for the Northern Pacific to determine. I approved of the retirement of the stock because it was a necessity.

Q. And the retirement of the stock was also a matter for the Northern Pacific, too, was it not?

A. Certainly.

Q. Why do you make any distinction between the retirement of the stock and the ways and means of doing it, which would be a corporate action, would it not?

A. I could have insisted on the retirement of the stock 423 when I held or represented with others as large an amount as we did early in the season. I could not tell the Northern Pacific how they should retire their own stocks or what financial arrangements they should make.

Q. Then, in other words, Mr. Hill, I understand your testimony to be that while you were interested in the retirement of the preferred stock, you did not approve or disapprove of the methods by which that retirement was carried out?

A. I did not disapprove of them, I know.

Q. Did you approve of them?

A. Why, I accepted them, and that was approval so far as 424 they affected my holding.

Q. Now, I will show you Exhibit 5, which is attached to the answer of defendant company in the case that we are taking this testimony in, that purports to be a copy of an agreement between the Standard Trust Company and the Northern Pacific Railway Company.

Mr. Kellogg. That is correct. It is unless there is any mistake in it, and I don't think there is.

Mr. Lancaster. That came from your office, Mr. Kellogg? 425

Mr. Kellogg. Yes, sir; and it is correct.

Q. Have you examined Exhibit 5?

A. I examined that paper that you showed me.

Q. That is Exhibit 5 attached to defendant's answer?

A. Yes, sir.

Q. I will ask you if you executed that agreement in your own name and in your own behalf?

Mr. Kellogg. You have referred him to an agreement.

Exhibit 5 was executed between the Northern Pacific and the Standard Trust Company. 426

Mr. Bulkley. That was the one you referred to in the evidence.

Mr. Kellogg. Which one do you mean, Mr. Hill, to refer to, the one he executed or the one to the Standard Trust Company?

Mr. Boutell. The underwriting agreement was probably attached to the agreement, wasn't it?

Mr. Kellogg. That may have been so. This is the underwriting agreement.

Mr. Lancaster. I suppose it was all one agreement and one paper? 427

A. Oh, no; one was a Northern Pacific matter, and this was a personal matter.

Q. Now, I will call your attention to what we will designate as the underwriters' agreement.

A. Yes, sir.

Q. Which purports to be a contract between the Standard Trust Company of New York and Kuhn, Loeb & Co., J. P. Morgan & Co., James J. Hill, George F. Baker, and John S. Kennedy. This appears as an exhibit to the defendant's answer. I ask you if you executed that on or about the 18th day of November, 1901? That is the date that is given here. 428

A. Yes, sir; I executed that agreement.

Q. And at the time of the execution of the underwriters' agreement, did you know of the execution of the agreement between the Standard Trust Company of New York and the Northern Pacific Railway Company, executed on the 15th day of November, 1901?

A. I knew that the Standard Trust Company had made an

429 agreement with the Northern Pacific to take the certificates of indebtedness. I don't recall the date.

Q. As a matter of fact, Mr. Hill, was not the agreement between the Standard Trust Company and the Northern Pacific Railway Company made a part of and a copy of that agreement attached to your agreement with the Standard Trust Company; was not that a part of it?

A. No, sir; it was not.

Mr. Kellogg. I shouldn't wonder if it was.

A. My recollection is clear that the underwriting paper was
430 presented to me in Mr. Morgan's office and explained to me. I was offered one-third of the one-third of the underwriting, and I took it.

Q. Mr. Hill, I call your attention to the language of the underwriters' agreement where it says, "The trust company, at the request of the subscribers, has made or is about to make an agreement with the Northern Pacific Railway Company of even date herewith, a copy of which is hereto annexed and marked 'Exhibit A,' upon the express conditions that the subscribers hereto enter into this agreement." Now, with your attention called to that provision of the contract
431 which you signed, are you able to say that there was not attached to the paper which you signed a copy of the agreement between the Standard Trust Company and the Northern Pacific Railway Company?

A. My recollection is that the underwriting agreement was not attached to anything, and that it was executed on or soon after the date I testified a while ago; that it was my best recollection, and is now, that it was executed after the Northern Pacific put out this circular notice.

Q. Mr. Hill, is it not a fact that the Standard Trust Company would not enter into the agreement with the Northern
432 Pacific with reference to furnishing the money upon the certificates of indebtedness until the underwriters' agreement, which I have just shown you, was executed by Kuhn, Loeb & Co., J. Pierpont Morgan & Co., James J. Hill, George F. Baker, and John S. Kennedy?

A. I have no knowledge what the Standard Trust Company might have done with the Northern Pacific beyond what they did do, and my understanding was, and is now, that they made

that agreement or arrangement, and that this underwriting 433
was offered to the parties, and after the arrangement was made. And if I had not signed it, and if Mr. Kennedy had not signed it, and Mr. Morgan not signed it, any number of others were ready to sign it for the profit they would make out of it, because underwriting usually carries a profit with it. If these certificates were not all subscribed by the holders of the common stock the unsubscribed portion would come to the underwriters. That is what that agreement means. I was under no obligation to sign it a minute before I put my name to it, and there was no previous agreement 434
made that I should sign it, and when I was offered it to sign I remember quite well it was in the evening in the office of Messrs. Morgan & Co. I was not under any obligation to sign it, and there had been no agreement that I should sign it. Anybody else—any banker—would have been glad to have signed it and take his chance of making some profit out of it.

Q. What I am trying to get at is whether or not it was understood and agreed between the Northern Pacific Railway Company and the Standard Trust Company that before the Standard Trust Company would undertake the obligation of 435
the agreement between those parties, the same would have to be underwritten by responsible people satisfactory to them?

A. That is a question I could not answer.

Q. That answers it. That is all I want. When you can't answer a question and don't know, that is enough.

A. I could not answer what was the understanding between the Northern Pacific. I know what the understanding was with me when I signed that agreement.

Q. And at the time that you signed this agreement there had been no previous understanding or agreement of any 436
kind that you should execute it?

A. No, sir; none whatever. If I didn't sign, or if Mr. Kennedy did not sign it, we were under no obligation of any nature or kind. I know Mr. Kennedy hesitated some time. He said, "We may be called upon to take a very large amount." Mr. Morgan said, "If you don't want it, I will be very glad to take it myself."

437 Q. Mr. Hill, do I understand you to say that before the meeting of November 13, 1901, you knew that the preferred stock of the Northern Pacific was to be retired?

A. I knew that a number of people in the Northern Pacific had discussed it many times, and I knew from Messrs. Morgan & Co. and from the officers of the company and the directors that it would be retired.

Q. Had you talked with the directors of the Northern Pacific directly with reference to it?

A. Some of them.

Q. Had you talked with a majority of them?

438 A. I didn't keep exact count as to the number. I think I did unquestionably talk with a majority.

Q. What I am getting at is whether you knew before November 13 that the matter had been sufficiently discussed and determined upon so that you were sure of the action which the board was going to take on the 13th?

A. I felt entirely sure that on the 13th of November the action that was taken would be taken to retire the preferred stock of the Northern Pacific.

Q. Had you discussed this matter with Mr. Harriman with

439 reference to the retirement of the preferred stock?

A. I don't recall any such discussion.

Q. Did you discuss the matter with Mr. Jacob H. Schiff?

A. I don't recall any. I remember Mr. Schiff telling me on one occasion that they had the opinion of quite prominent lawyers that the stock could not be retired, and I told him to save his breath on that matter because our counsel had told us that it not only could be retired, but I asked him not to bank on it being continued after the 1st of January. Whether that was before or after the 13th I couldn't say.

Q. Now, as a matter of fact, Mr. Hill, how was the preferred

440 stock retired?

A. I don't know, except that it was retired and paid for in cash. I think it was presented at the office of the Northern Pacific. It might have been at Mr. Morgan's office for greater convenience, because the office of the Northern Pacific is up on the fifteenth or sixteenth story of a very high building, and the other is right on the street—I don't know, I was not in New York at the time.

Q. As a matter of fact, Mr. Hill, do you know that all of 441
the preferred stock was in fact retired and has in fact been retired?

A. I don't know that.

Mr. Boutell. Is not that matter covered in the amended answer?

Mr. Kellogg. Yes; it has all been retired. There may be a few certificates that have not been turned in. We will find out definitely if you want to know.

Q. Well, by the resolution of November 13, 1901, there was a provision made for the benefit of the common stock holders to subscribe for the certificates of indebtedness, wasn't there? 442

A. Yes, sir.

Q. And there was also another provision by which those certificates of indebtedness could be converted into common stock?

A. That is my recollection.

Q. Now, what arrangement, or agreement or plan was all laid out and practically agreed upon by the interested parties prior to November 13, 1901?

A. The plan or details was a matter that came under the direction of the Northern Pacific, and I could not testify as 443
to what they did further than any other shareholder. My recollection is that they issued certificates which were convertible into common stock, and these certificates were subscribed for by the common stock holders at par and afterwards were exchanged for common stock. That is what I did with mine.

Q. I don't think you quite understood my question. I want to know if the details of this plan with reference to the issuance of the certificates of indebtedness by the Northern Pacific and the subscriptions for those certificates by the common stock holders, and then the further step of converting 444
those by the subscribers into common stock—whether all those plans and details were in fact agreed upon by yourself and Mr. Morgan and other interested parties previous to November 13, 1901?

A. I had nothing to agree to in the matter. It was a matter for the Northern Pacific to do. I was not a member of the board of directors of the company, and I had no agree-

445 ment and I could not make any agreement except as to my stock.

Q. Well, Mr. Hill, did you know previous to November 13, 1901, the details of the plan which was to be voted upon?

A. Oh, in a general way I have no doubt I knew what the intention was.

Q. You knew that the subscription for the certificates of indebtedness would not be open to preferred stock holders, didn't you?

A. It was stipulated expressly in the circular that it was to common stock holders.

446 Q. What I am getting at is, previous to the meeting of November 13, 1901; I want to get your knowledge of what that resolution was or was to be. Now, I want to know if previous to November 13, 1901, you knew of the details of the plan which was to be voted on at that meeting of the board of directors?

A. I knew in a general way all the steps that were to be taken, but as to the details I could not testify how much or how little knowledge I had on the subject. I knew in a general way that the stock was to be retired by an issuance of

447 certificates to the common stock holders and not to the preferred stock holders.

Q. Who had the matter of the preliminaries, or making or devising the scheme and formulating the plan—who had the matter in charge for the Northern Pacific?

A. I couldn't say. I suppose the Northern Pacific counsel had charge of it.

Q. Prior to November 13, 1901, you knew that this plan as it would work out would result in the then owners of the common stock of the Northern Pacific acquiring the additional $75,000,000 of common stock which would be issued?

448 A. I knew that ever since the reorganization of the company. I knew that that was the condition when the preferred stock was retired, and that it might be retired at any time up to 1917.

Q. You don't mean that it was made a condition. You mean that there was a provision in the charter of the Northern Pacific allowing the company to make provision so that the preferred stock could be converted into common stock or retiring it?

Mr. Kellogg. Yes; that was in the certificates of stock, 449
too, and the resolutions issuing it, and everything.

A. The common stock would control the company.

Q. Mr. Hill, do you mean by that to say that there was any provision or, rather, condition in the charter or in the reorganization agreement or in the certificates themselves of the preferred stock by which the common stock holders should get the additional common stock to retire the preferred stock?

A. I always understood that. I understood it from Mr. Morgan about the time I bought a very large block of stock from the committee.

Q. Mr. Hill, did you understand, and do you understand 450
now——

A. I will answer that a little further, if I may, that when the preferred stock was retired there was only common stock, and my understanding of the situation was based largely on a conversation with Mr. Morgan; that it was his intention to retire that preferred stock about the time that the voting trust expired, which was five years. I think it legally expired in five, but was abandoned or discontinued—dissolved—at the end of four years. I am very clear Mr. Morgan told me that when the voting trust expired that he wanted to have only 451
one kind of stock, and would retire the preferred stock.

Q. I think your original answer is not correct when you say that it was a condition. I want to know if it is your present understanding, or has ever been your understanding, that there was any condition by which the preferred stock was to be surrendered, and, conditionally, common stock issued for the benefit of the common stock holders. In other words, was it necessary that the preferred stock should be retired in favor of the common stock holder, so that he would acquire additional stock, or could not the preferred stock have been retired in any manner which the directors may have selected 452
or chosen?

A. My understanding was based upon a somewhat intimate knowledge of the situation before the reorganziation committee. The preferred stock was largely issued in lieu of bonds, and the holders of these wanted bonds in place of stock. The reorganization committee was very anxious to keep the fixed charges as near $6,000,000 per annum as they could—not to

453 exceed six and one-quarter millions of dollars—and I am clear that Mr. Morgan told me that he said to the representatives of these people that he meant to pay that preferred stock off —said you can have preferred stock and not bonds, and we will pay you the preferred stock in money, and they took the privilege to pay it up to 1917. Now, that conversation with Mr. Morgan was at an early time, and it may have affected my understanding. But your question as to the understanding had with Messrs. Morgan & Co. about the 1st of May, that we were to hold our common stock, was on the condition that the Northern Pacific should be retired at the first opportunity,
454 which was the succeeding January or following January.

Mr. Bulkley. You mean the preferred stock?

A. The Northern Pacific preferred stock; yes.

Q. Now, Mr. Hill, to get back previous to November 13, 1901. Whether you know all the details of the plan which was submitted to the board of directors on that day or not, you knew that the ultimate object of the retirement and the carrying out of that plan would result in the common stock holders of the company increasing their holdings to the extent of $75,000,000 new issue of common stock?

455 A. Seventy-five millions, or such part of that as was subscribed for whenever the stock would be retired.

Q. And you also knew that under the arrangement which was to be passed by the board of directors the preferred stock holder would have no part or share in that privilege of subscribing?

A. I understood that he would have no more share in the debentures or certificates that could be converted into common stock than if they had not contained that provision—any more than if they had been a time bond—and that the preferred stock holder would simply get his money and cease to
456 have any interest in the Northern Pacific Ralway Company.

Q. And the further plan with reference to the subscription to the certificates of indebtedness and the converting of those certificates into the further issue of common stock was all done for the benefit of the common stock holder, wasn't it?

A. It was done for the benefit of the common.

Q. Well, if it was a privilege to subscribe for the stock, that privilege was only extended to the common stock holder?

A. If the preferred stock was entitled to dividends before 457
the common stock could receive any, to get that preferred stock out of the way it was certainly an advantage to the common stock.

Q. What steps, if any, had been taken by you and your associates and Mr. Morgan and his associates with reference to the organization of the Northern Securities Company prior to November 13, 1901?

A. The Northern Securities Company, or a company of that character, has been considered by the large shareholders of the Great Northern Railway Company for several years.

Q. And for what purpose, Mr. Hill? 458

A. For the purpose of combining their interest in the property.

Q. And what was the object or purpose of the combination?

A. Some of them were very old men and they had always acted together and in harmony, and they desired to perpetuate that action.

Q. What amount of stock, par value, of the Great Northern Road did those men that you now speak of hold prior to November 13, 1901, in the Great Northern Road?

A. Oh, I don't think there was any material change in their 459
holding for a long time. I could not say about November 13.

Q. About.

A. On the 1st of November I should say they held somewhere from thirty-three to thirty-five millions.

Q. And were you among the number?

A. Yes, sir.

Q. How many individuals do you refer to in that connection, Mr. Hill?

A. Oh, fifteen or sixteen.

Q. That is, that you refer to as old men?

A. No, some of them are old men. Several of them are old 460
men; but as those who discussed this matter for a long time and who finally took action upon it.

Q. And was that the purpose and object, Mr. Hill, of your organizing the Northern Securities Company?

A. That was the purpose.

Q. And at the time of the organization of the Nortnern Securities Company were these things that you have told us

461 the only objects or purposes that you had in mind at that time?

A. The action in buying the majority of the stock of the Northern Pacific in the market in April or May, or both, brought the question up more strongly than before as to the necessity of the Great Northern old shareholders who had been continuously connected with the property from the beginning making their holding together permanent, and, I think, in June, somewhere about the 5th or 6th of June, speaking from recollection, Mr. Kennedy, on his return from Europe, discussed the matter with me, going over the entire situ-
462 ation, the relations of the Burlington; the relations growing out of the Burlington; the relations growing out of the large purchases by the Union Pacific interests of the Northern Pacific, and suggested whether we should not include in our holding company our holdings in the Northern Pacific.

Q. And for the same purpose?

A. For the same purpose, so that we would all act together and no one would sell out or leave the others. We would all act together.

Q. For the purpose of unifying the interests that you had in
463 the two roads?

A. Yes, sir; for the purpose of unifying the interests in each road; because when the Burlington was transferred or sold to the Northern Pacific and the Great Northern jointly, our owning an equal share in the company it was a matter of great consequence to the Great Northern as to who would own the stock of the Northern Pacific or control the Northern Pacific, and some of our shareholders—some of them are 86 years old, others are more than 80, and so on—they might have concluded that they would sell their stock, and it might have made a difference as to the majority of the common stock.

464 Q. Of the Northern Pacific?

A. Of the Northern Pacific, if the control of the Northern Pacific passed to the Union Pacific, as a matter of influence. The control of the Great Northern would have passed to the Union Pacific because we would not have held it a day longer than we could have sold it.

Mr. Boutell. You mean the Burlington instead of the Great Northern.

A. I testified that the Great Northern would pass to the Union Pacific if we sold it, very quickly. You can see readily that we didn't want to hold a line from Lake Superior and the Twin Cities to Puget Sound, with all the rest of the roads in the United States in a position to fight us and without power to fight back. 465

Q. Mr. Hill, was it the object and purpose of the Northern Securities Company to acquire a majority of the stock of the Northern Pacific and of the Great Northern?

A. When it was first discussed it had no reference to the Northern Pacific at all.

Q. And later on, when the Northern Pacific was taken into the scheme, was it with a view to acquire a majority of the stock of the Northern Pacific as well as of the Great Northern? 466

A. The discussion covered simply the Northern Pacific common stock held. I am not sure that it covered any of the preferred. I am sure that it covered the common stock held by myself and close friends.

Q. Well, now, when were the first actual steps taken to organize the Northern Securities Company?

A. The first active steps were taken, I should say, a couple of years ago; but the official steps, or the steps of making the company of record—— 467

Q. That is what I mean.

A. Well, that would be shown by the date of the organization, the date of the filing of the articles. I could not give that date.

Q. I suppose there would have to be some preliminary steps taken, wouldn't there?

A. I was not present at the formation of the company.

Q. When and where was it agreed that the capital stock should be four hundred million? 468

A. That was the first meeting of the Northern Securities Company, or maybe the second meeting; I don't know.

Q. You mean after the organization?

A. The first meeting that I attended.

Q. After the organization?

A. I think so.

Q. Mr. Hill, let us come right down to the time when the Northern Securities Company was organized.

469 A. Yes, sir.

Q. Without reference to what you had had in mind in previous years, I want to know when, with reference to the filing or publishing of your articles of incorporation, was the amount $400,000,000 capital stock agreed upon.

A. I am not clear that the capital stock was fixed at four hundred millions when the articles were filed. I may have another company in my mind. But my recollection was that the articles were filed and this amount increased.

Mr. Kellogg. That don't seem to have been.

470 A. I am speaking from recollection. This paper you have shown me would be a great deal better than my recollection.

Q. But, Mr. Hill, after you have seen this provision with reference to the capital stock of the company, are you not able to fix approximately the time when you and your associates agreed upon the amount of the capital stock?

A. No.

Q. Well, was the amount of the capital stock of the Northern Securities Company fixed with reference to the capital stock of the Northern Pacific and Great Northern Railway companies?

471 A. It had some reference to that.

Q. Did it have reference to the then actual market value of those two stocks?

A. No, sir.

Q. Well, then at the time you formed the Northern Securities Company, organized the Northern Securities Company, had you agreed upon the basis at which the Northern Pacific stock should be turned into the Northern Securities Company in exchange for Northern Securities stock, as well as the basis on which the Northern Pacific stock should be turned in in exchange?

472 A. My recollection of that is that possibly in my interview with Mr. Kennedy, early in June, soon after his return from Europe, that the question came up as to how, if we put our own holdings into a company, upon what basis this stock would go in, and he asked me to turn it over. Maybe I wrote him and maybe I saw him; but I think the basis—I think, after consulting with two or three of the shareholders, I fixed the rate upon which each, the Northern Pacific and the Great

Northern, would be taken or purchased by the holding company when such holding company was organized. 473

Q. Was that rate, Mr. Hill, that you fixed $1.15 for the Northern Pacific, and $1.80 for Great Northern?

A. That was right.

Q. What I am getting at is this: Wasn't the four hundred million capital stock of the Northern Securities Company determined upon because of the fact that that would practically include or take in all of the stock of the Northern Pacific Railway Company and the Great Northern Railway Company at or upon the basis which you indicate?

A. After discussing the matter with Mr. Kennedy, and with 474 some of my friends from abroad who were here in July, it was considered, and I may say determined, to go on and form the company. Many of them felt that they would like to give all the shareholders of the Great Northern the right to participate in any company, the old leading shareholders to put their stock in, and they said if a close corporation was formed it would be the first time in the history of the property that each and every shareholder had not the same opportunity that every other shareholder had, and they discussed that with me, sometimes one and sometimes another. There was no meet- 475 ing to discuss it. The general feeling, however, was among those with whom I talked, and I had that feeling myself, that we would give each shareholder the opportunity to come in at the price we put our own in, if he desired, and if he preferred to stay out, that was his privilege. Now, in making the arrangement, or in arranging the amount of capital stock that had to be provided for, there was also a condition that had reference to the fixing of the amount. There were other companies, other properties, some of which are not located in this country, and the holding of which was hardly contemplated by the corporate authority of the Great Northern. It was in- 476 tended to cover all shares of that character and of companies of that description in the securities company. That had to do with the amount of the capital stock. But that it was solely to hold the Northern Pacific and the Great Northern. That wasn't the controlling point. It could be amended at any time, to increase it or decrease it. But to provide for the hundred and twenty-five millions Great Northern at $1.80

477 would take $225,000,000 of the securities company, if that many of the Great Northern shareholders chose to sell their stock to the securities company.

Q. Now Mr. Hill, to go back just a moment. After all this talk and discussion that you have had for several years with reference to forming a corporation to hold stock of the Great Northern Railway Company originally and subsequently the holdings of the Northern Pacific, there came a time when some definite conclusion was arrived at.

A. Yes, sir.

478 Q. And somebody was authorized and requested to go ahead and organize a corporation. Now, about when and where was that determination arrived at?

A. The determination to form the corporation was arrived at before the 1st of July.

Q. 1901?

A. 1901.

Q. And the plan for organizing the Northern Securities Company——

A. Was worked out and modified or changed between the 1st of September and the date of the publication of the arti-

479 cles.

Q. Who finally decided upon the plan that was adopted in the organization of the Northern Securities Company?

A. Practically, Mr. Kennedy, Mr. George Baker, Mr. James, Mr. Thorne, Mr. Clough, Mr. Perkins, and myself.

Q. And were there no others than those whose names you have just given who had anything to do with the actual perfecting of the plan of organization of the Northern Securities Company?

A. No one outside of the counsel who drew the papers. I think I had as much to do with it as anybody.

480 Q. Mr. Hill, in the discussion and consummation of the plan which resulted in the organization of the Northern Securities Company, had J. Pierpont Morgan or his partners anything to do with it?

A. Mr. Perkins was his partner. He had something to do, but in the first instance nothing, and at the last very little.

By the consent of all parties an adjournment of these proceedings was had at this time until February 18, 1902, at 10 o'clock in the morning.

Tuesday Morning, February 18, 1902. 481

JAMES J. HILL, recalled.

Examined by Mr. Lancaster:

Mr. Lancaster. Last night I forgot to formally offer in evidence complainant's Exhibit E. I offer it in evidence now.

Q. Mr. Hill, I understood you yesterday to say that in the matter of the basis upon which the Northern Pacific common was to be turned into the Northern Securities Company and the stock of the Great Northern, that you fixed that basis 482
yourself. Is that correct?

A. I recollect, or as I recollect it, the figures I suggested were adopted and considered right by the parties whom I consulted.

Q. And what considerations determined $1.15 for the Northern Pacific common, Mr. Hill? What were the chief considerations which determined that amount with you and your associates?

A. The value of the property, the property taken as a whole; its capacity to earn money, its land grant, and the situation in the country, and so on. 483

Q. Did the market value of the stock at that particular time——

A. The stock hadn't a market quotation at the time that I suggested the figure. My recollection is that at the time that the figure was suggested or named it was midsummer.

Q. And at the time when you suggested that figure and that was determined upon, the Northern Pacific common was practically out of the market, wasn't it?

A. I think so; not quoted.

Q. And was not being sold in the stock markets?

A. No transactions. 484

Q. Was the Great Northern stock being sold at the time when the $1.80 was agreed upon?

A. When that rate was named, Great Northern was selling on the market.

Q. And at what figure?

A. My recollection is about $1.95.

Q. At the time when it was agreed to put it into the Northern Securities Company at $1.80?

485 A. Yes, sir.

Q. And had it been selling at $1.95 for any length of time previous to that?

A. Oh, yes; it had been selling; it sold up to $2.

Q. Was $2 the highest point it had reached?

A. I don't recall the figures; possibly something over 200. I don't carry those figures in my mind.

Q. The considerations which you mentioned in reference to the Northern Pacific, were those chiefly instrumental in fixing the $1.80 as the basis of the Great Northern, excluding the land grant; I think you mentioned the land grant in reference
486 to the Great Northern?

A. In reference to the Northern Pacific.

Q. I mean the Northern Pacific, yes.

A. The Great Northern had property that gave it a value and were considered in addition to the railway.

Q. Mr. Hill, at the time when the $1.15 for the Northern Pacific common and $1.80 for the Great Northern was agreed upon as the basis upon which those stocks were to be exchanged for Northern Securities Company stock, did Mr. Harriman and his associates, or the Oregon Short Line or the
487 Union Pacific hold their $78,000,000 of Northern Pacific common or preferred?

A. The question seems to assume something that I have not testified was the case. It says it was agreed upon; I say that I suggested this price. I recall no agreement.

Q. I understood you to say, Mr. Hill, that you suggested the price and it met with approval and that that was actually——

A. The approval of those with whom I consulted, and they were very few, and this was simply a stockholders' affair acting individually, and a circular was subsequently prepared after the formation of the company; but before that it was
488 limited to a very few people, and in that connection let me say there was no agreement or formal undertaking.

Q. In that connection will you give me the names of the very few stockholders with whom you consulted and to whom you suggested the $1.15 and $1.80 as the prices of exchange?

A. I think the suggestions were mainly confined to Mr. Kennedy, Mr. James, Mr. Thorne, Mr. Sterling, and Mr. Baker. Now, it might have been suggested to some others; probably Mr. Clark.

Q. Did any of those gentlemen whose names you have given 489
represent J. Pierpont Morgan & Co.?

A. No, sir.

Q. Before the circular was sent out and this basis given out to the stockholders generally, did you suggest this basis of $1.15 and $1.80 to anybody representing J. Pierpont Morgan & Co.?

A. I don't recall. I think I have an indistinct recollection of discussing the matter with Mr. Morgan, but as to whether the price or rate for exchange was discussed, I could not testify.

Q. Now, Mr. Hill before this basis was suggested to your 490
friends, whose names you have given, or at the time of that suggestion, did Mr. Harriman, or the Oregon Short Line, or the Union Pacific, hold the seventy-eight millions of the common and preferred of the Northern Pacific?

A. As a matter of hearsay, I should testify they did. It was after the purchase, but I didn't know, as I testified yesterday, what stock they held until it became apparent by their having their stock transferred on the books of the Northern Pacific Company, and I learned through that channel, which would be some time late in September.

Q. Well, it was your understanding, and is your understand- 491
ing at the present time, Mr. Hill, that, subsequent to May 9, the Harriman interests, or the Union Pacific interests, did not acquire any additional stock, either common or preferred?

A. I don't know that. I know they claimed to hold a majority of the Northern Pacific Company at that time.

Q. Now, Mr. Hill, I understood you to say that this suggestion of the basis of exchange was made some time in the midsummer of 1901?

A. Yes, sir.

Q. And so far as you knew then, and so far as you know 492
now, the Harriman, the Oregon Short Line, and the Union Pacific interests held whatever stock, common and preferred, in the Northern Pacific which they held on or about May 9?

A. I knew by what they claimed and by common hearsay, that they held what they asserted was a control of the Northern Pacific.

Q. Subsequently to this time, when this basis of exchange

493 had been suggested by you to your friends, did Mr. Harriman, acting for the Union Pacific, or the Oregon Short Line, or for others, sell or make any agreements to sell all or any portion of the seventy-eight millions of common and preferred stock of the Northern Pacific Railway to you or your friends, or your associates, or to J. Pierpont Morgan & Co., to your knowledge?

A. My recollection is that he sold it to Morgan & Co.

Q. And about what time, Mr. Hill, did you learn of that sale?

494 A. I couldn't fix the time closer than to say I should place it in the month of November.

Q. Was or was not there an agreement of sale practically concluded along about the month of November?

A. None whatever, to my knowledge; I never heard of any.

Q. And so far as you know, the sale was negotiated and consummated some time in the month of November?

A. That is as far as I know.

Q. Had there been any previous negotiations with Mr. Harriman, or with anyone representing Mr. Harriman, carried on by you or your associates, or to your knowledge by J. Pierpont
495 Morgan & Co., looking to the purchase of Mr. Harriman's or the Oregon Short Line's interests in the Northern Pacific?

A. I was aware at the time that negotiations were being carried on. I remember Mr. Harriman making some proposition to me in regard to railway matters and in regard to territorial matters, and nothing came of them; they were dropped.

Q. Well, do I understand you to say that there were any negotiations carried on, either by you or your associates, or by J. Pierpont Morgan & Co., to your knowledge, looking to the purchase of Mr. Harriman's interests, or the Oregon Short
496 Line's interests, or the Union Pacific interests, prior to November?

A. My recollection is that about the month of November Mr. Bacon, of Morgan & Co., was about to sail for Europe, and he had before he went abroad conducted these negotiations.

Q. That is, he had conducted the negotiations with Mr. Harriman looking to the purchase of Harriman's interests in the Northern Pacific?

A. Whatever the negotiations were. That was my under- 497
standing. I was not present during these negotiations, except I remember on one occasion I came into Mr. Morgan's office, and in the evening I saw Mr. Harriman there, but I left immediately. Mr. Bacon and Mr. Harriman retired to another room. My business was transacted and I left.

Q. I understood you to say yesterday that the organization of the Northern Securities Company was practically settled and decided upon in the summer of 1901?

A. That is correct, and the rate at which the Northern Securities Company would take the stock was decided, but that 498
was at a time when it was expected that the Northern Securities Company would hold a comparatively small amount.

Q. Of what?

A. Northern Pacific or Great Northern.

Q. Mr. Hill, at the time when the Northern Securities Company was decided upon, which took place some time in the summer of 1901, at that time, to your knowledge, were there any negotiations being carried on, or had been carried on prior to that time, with Mr. Harriman, or with persons representing Mr. Harriman, or the Oregon Short Line, looking to the purchase of the entire holding of the Union Pacific or the 499
Oregon Short Line or Mr. Harriman?

A. There was absolutely no such negotiations, directly or indirectly, and I think there could not have been any without my knowing it.

Q. Now, the actual sale of the Harriman stock—we will call the stock which stood in the name of the Oregon Short Line, and perhaps in the name of Mr. Harriman and Mr. Winslow Pierce, the Harriman interests or Harriman's stock. Now, at the time of the actual sale of that stock to J. Pierpont Morgan & Co., do I understand you to say it took place in November, 1901? 500

A. I testified as my recollection that it was sold to Morgan in November.

Q. Now, was or was not that sale the result of conferences between Mr. Harriman and J. Pierpont Morgan & Co., yourself and Mr. Schiff, of Kuhn, Loeb & Co.?

A. No; I don't recall conferences between myself, Mr. Schiff, of Kuhn & Loeb Co., or Mr. Harriman on that subject.

501 I do recall a number of conferences with Mr. Harriman in regard to railway matters.

Q. But so far as the sale of the Harriman interests, the Harriman stock, or the Oregon Short Line stock in the Northern Pacific—so far as the actual sale of that stock or the negotiations for that stock, you had or took part in them. Is that so?

A. I made no agreement with Mr. Harriman of any kind for the sale or purchase of that stock.

Q. That perhaps doesn't answer my question. Did you
502 take part in the negotiations which led up to the actual purchase of that stock by J. Pierpont Morgan & Co.?

A. I testified a moment ago that I recalled being in Mr. Morgan's office one evening when Mr. Harriman was there. The subject may have been mentioned as to what they were negotiating about, but I did not remain, and Mr. Harriman and Mr. Bacon withdrew into another room.

Q. Did you attend any conferences between Mr. J. Pierpont Morgan & Co., or any of his partners, Mr. Schiff or Mr. Harriman, which were held for the purpose of negotiating the purchase of that stock?

503 A. I recall none whatever.

Q. Then to leave that matter, Mr. Hill, I understand you to testify that you took no part and had no part in the negotiations which led up to the purchase by J. Pierpont Morgan & Co. of the Oregon Short Line stock, or the Harriman stock, or the Union Pacific stock?

A. My recolection is that the purchase was made mainly by Mr. Bacon.

Q. Of J. Pierpont Morgan & Co.?

A. Of Morgan & Co. Now, it is quite possible, and I might say more than possible, that I knew from time to time some-
504 thing of the negotiations, but the negotiations were carried on and closed, whenever they were closed, by Morgan & Co.

Q. Well, Mr. Hill, if you didn't take any active part, or any part, in the conferences with Mr. Harriman, did you consult and confer and advise with Mr. Bacon, of J. Pierpont Morgan & Co., with reference to the purchase of the Harriman or Oregon Short Line stock?

A. Oh, I think if Mr. Bacon asked me in regard to the matter I should have given him any advice that I could. 505

Q. I am not asking you, Mr. Hill, what you might have done, but have you any recollection now of actual conferences with Mr. Bacon?

A. I have no recollection of any special discussion or conferences, excepting the one that I have alluded to as taking place one evening when I was in Morgan's office, and met Mr. Harriman and Bacon there.

Q. Well, I understand from your previous testimony that nothing special at that time was said by anybody with reference to the sale of the Oregon stock at that meeting? 506

A. I recall nothing special, and I do recall Mr. Bacon and Mr. Harriman going into another room, I supposed to carry on their negotiations.

Q. Then you wouldn't refer to that meeting that evening in Mr. Morgan's office as a conference looking to or in any way touching the purchase of this stock?

A. Not a conference that would affect the result particularly.

Q. Were you called by anybody to that meeting?

A. I don't recall the reason why I went there. I had occasion to go in and out of Morgan's office several times a week. 507

Q. But at the present time you don't recall any reason for your visit to his office that evening?

A. I do not recall the reason. Now, I might have been called in there to ask me some question about a railway, I don't know; or some question in regard to the matter in hand; I don't recall it. I was not, however, the main party in carrying on the negotiations.

Q. Now, when you say that this sale was made in November, are you speaking of your own knowledge? That is, you say the Harriman sale was made in November? 508

A. I am speaking of my best recollection; that is all.

Q. Are you able to testify that it did not occur either in September or October of 1901? I would show you Mr. Harriman's testimony.

A. I will say that that is not according to my recollection. I have no doubt you can establish the exact date without the slightest trouble.

509 Q. I will ask you this, Mr. Hill: Do you know whether or not there was an agreement for the sale of this stock previous to November?

A. I know of no such agreement. I think and feel certain that if any such agreement had been made I would have known something of it.

Q. Now, at the time when the actual sale of the Harriman stock was made to J. Pierpont Morgan & Co., had the Northern Securities Company been incorporated?

A. I couldn't testify to that. I haven't charged my mind
510 with that figure because I always go to the figures.

Q. Calling your attention to the date of the articles of incorporation of the Northern Securities Company, November 13, 1901, are you able to state whether the sale of the Harriman stock was made to J. Pierpont Morgan prior to that time?

A. I could not testify with any accuracy.

Q. Mr. Hill, do you know that as a part of the consideration for the sale of the Harriman stock, so called, to J. Pierpont Morgan & Co., a large block of Northern Securities Company's stock, which was to be issued later, was to be turned over to
511 Harriman or his associates?

A. I knew that the stock was exchanged the same as other stock. Now, that is all the exact information I had on the subject.

Q. I want to make this quite clear, if I can, Mr. Hill. Do you now know of your own knowledge that at the time when the sale was actually made by Mr. Harriman to J. Pierpont Morgan & Co., that it was agreed that Mr. Harriman should receive, as part consideration for that stock, Northern Securities Company stock to a large amount?

A. I knew that that was the course that was pursued, but
512 when I got that knowledge I can't recollect. I can't recall whether it was before or at the time the stock was delivered to the securities company. Now, it might be that I knew a day or two before. It might be that I knew three or four days, because the transaction was large and the time that would elapse between the purchase of the stock by Morgan, or what arrangement he made for the purchase, rather—it was part cash——

Q. What I want to get at is this: Are you able to state now 513
whether or not you knew prior to the actual transfer or sale of the Harriman stock to J. Pierpont Morgan & Co., that as a part consideration for that transfer and sale Northern Securities Company's stock to a large amount was to be turned over to the Harriman interests? That is what I want to know.

A. I could not testify as to when I got that knowledge. That is the best testimony I can give.

Q. Mr. Hill, was this substantially the transaction as you understood it then and as you understand it now: That Mr. Harriman sold his Northern Pacific common and preferred to 514
J. Pierpont Morgan & Co. for cash, with a reservation of an option on his part—Morgan's part—to give him a certain percentage of Northern Securities Company stock instead of cash when it should be issued?

A. My knowledge of the matter is substantially what was done, and whether Morgan agreed to pay him cash with a reservation is a matter that I had no knowledge of.

Q. Then, Mr. Hill, right in this connection, will you please state what you know was done with reference to the Harriman stock?

A. The stock was turned over. I think the common stock 515
was turned over to the Northern Securities Company—sold to it. The preferred stock was retired.

Q. Retired by whom?

A. The Northern Pacific.

Q. Who presented it for retirement?

A. I couldn't say; Morgan & Co., I assume.

Q. It had previously been turned over by Mr. Harriman to Morgan & Co.?

A. Yes.

Q. And Morgan & Co. presented it for retirement?

A. I think so; I was not in New York at the time, but that 516
would be the general course, and is my understanding.

Q. When you speak of the common stock being exchanged or sold to the Northern Securities Company, who exchanged it? That is, who presented it for exchange, J. Pierpont Morgan & Co. or Mr. Harriman?

A. My recollection is Morgan & Co.

517 Q. And is it not a fact that J. Pierpont Morgan & Co., after the exchange of the Harriman common stock, turned over to Harriman or his associates between fifty and sixty millions of the Northern Securities Company's stock?

A. I don't know the amount, but they turned over whatever amount was the equivalent of the common stock purchased by the Northern Securities Company.

Q. Well, as a matter of fact, Mr. Hill, don't you know that Mr. Harriman actually acquired and now holds, either for himself or for the Oregon Short Line or the Union Pacific, a much
518 larger proportion of Northern Securities Company's stock than would have been given to him or exchanged to him for his common stock in the Northern Pacific?

A. As soon as the notice was given to redeem the preferred stock of the Northern Pacific, my recollection is that a number of the preferred stock holders surrendered their stock, took their certificates for their common and converted them. Now, it may be, and I think quite likely, that that is what was done by Mr. Morgan or his firm with the Harriman preferred stock. I know that others did that.

Q. Mr. Hill, do you know now, of your own knowledge, how
519 much cash the Harriman interests got upon the sale of their common and preferred stock, aggregating about seventy-eight millions par value?

A. I do not recall the exact amount of the cash.

Q. Did you hear Mr. Harriman's testimony before the Interstate Commerce Commission?

A. Part of it.

Q. Do you remember his testimony in regard to his present holdings in the Northern Securities Company?

A. I do not.

Q. And do I understand you to say that at the present time,
520 Mr. Hill, you do not know within five or ten millions of the holdings of Mr. Harriman and his associates, in the Northern Securities Company?

A. I think that they hold somewhere from seventy-five to seventy-eight millions of the Northern Securities Company's stock. They may have sold. I am basing this on what I assume they held a month or six weeks ago; they may have sold some of it.

Q. Then, a month or six weeks ago, Mr. Hill, the Harriman 521
interests held some seventy-five to seventy-eight millions par value of the Northern Securities Company's stock?

A. That is my recollection.

Q. And as a matter of fact you don't know yourself of any sales by them?

A. I do not, and I would not, unless I was the purchaser. There is no way that I could know, unless I should watch the stock market, and I have not been there to do it.

Q. Now, Mr. Hill, was there any connection whatever between the organization of the Northern Securities Company and the purchase of the Harriman stock? That is, taking 522
those two things together, was there any connection between those two things and the selection of Mr. Morgan as arbitrator to name the board of directors of the Northern Pacific Railway Company?

A. There was absolutely no connection whatever. The time at which it was agreed by the banks to allow Mr. Morgan to nominate the directors was in May. The Northern Securities Company was actually formed in November. It had been discussed without any reference to Mr. Harriman's holding, or anybody else's holding for several years, and they had no 523
more to do with each other than you have to do with either of them, and I assume that you had nothing to do with them.

Q. Now, Mr. Hill, at the time of the selection of Mr. Morgan as an arbitrator to name the board of directors, was or was not a majority of the then board favorable and friendly to the Hill-Morgan interest?

A. Now, I would like to know what the Hill-Morgan interests are. I have seen it in the newspapers a great deal, but I have never been able to find out what it is.

Q. Well, I will explain it as I understand it. I understood that just shortly before May 9 you and your associates and 524
Mr. Morgan and his associates held and owned forty-two millions, or about forty-one or forty-two millions, of the common stock and something over thirty millions of the preferred stock of the Northern Pacific road, and I understood you to testify yesterday that you told Mr. Morgan that you would stand without hitching, and that you would not let go or deliver any of your stock, and he agreed to do the same thing,

525 and that you did stand together in that matter of holding the common stock together. That is what I understood by the Hill-Morgan interests; and with that explanation I will ask you if at that time a majority of the board of directors of the Northern Pacific Railroad was friendly to the Hill-Morgan interests?

A. I testified yesterday that Mr. Morgan was in Europe at the time. I also testified yesterday that we did not hold the outside preferred stock of the Northern Pacific Company, and this statement assumes things and puts words in my mouth
526 that I didn't say, because they weren't true.

Q. Then I will change it. I will try and make it conform to what you say your testimony was, Mr. Hill. I understood you to say yesterday afternoon that you and your associates and J. Pierpont Morgan & Co.—now, we will not quibble about J. Pierpont Morgan. I remember your testimony with regard to Mr. Morgan being away, but J. Pierpont Morgan & Co.—you and your associates and J. Pierpont Morgan & Co. owned and controlled and held previous to May 9 something like forty-two millions, perhaps a little less than forty-two millions, but a clear majority of the common stock?

527 A. Yes.

Q. Now, as to the amount of preferred stock I think you did testify that you did not know what amount of stock was held by you and your associates and Mr. Morgan & Co., so that we will leave that undetermined. But I now refer to the forty-one or forty-two millions of common stock which you referred to in your testimony yesterday afternoon, which you on your part and for your associates agreed to hold and not deliver to anyone, and Messrs. J. Pierpont Morgan & Co. agreed to hold theirs together. Now, I say I call that the Hill-Morgan interests, and I want to know if at that time a major-
528 ity of the board of directors of the Northern Pacific Railway Company were favorable and friendly to the Hill-Morgan interests?

A. They were selected mainly by Mr. Morgan, or the voting trust which had controlled the Northern Pacific. Some of them I knew were my friends. I couldn't name who they were, the list covered fifteen, and some of them were not friendly, at least to me.

Q. Mr. Hill, all the directors, then, on the board had been 529
named by the voting trust?

A. Elected by the voting trust.

Q. And that voting trust had been dissolved, I think, some eight or ten months?

Mr. Grover. The 1st of January.

Q. The 1st of January, 1901. Is that true?

A. That is right.

Q. So that at the following annual election the board of directors of the Northern Pacific Railway Company would be elected by the stockholders at their annual meeting?

A. That is correct. 530

Q. Now, was it your understanding at and prior to May 9, and I will say a few days subsequent when you held your conference with Mr. Harriman which you testified to yesterday afternoon, that a majority of that board as then constituted was favorable and friendly to Mr. Morgan or J. Pierpont Morgan & Co. and yourself and associates?

A. I knew that some members of the board were my personal friends; I knew that some of them were unfriendly and had been.

Q. Mr. Hill, at the time when you promised J. Pierpont Mor- 531
gan & Co.—that is, one of the partners of the firm, Mr. Morgan being away—that you would hold your common stock, and they agreed to hold theirs, you testified that there was an agreement with J. Pierpont Morgan & Co. and an understanding that the Northern Pacific preferred should be retired. Is that correct?

A. That is correct. I told them that if the Northern Pacific control was retained, or to assist them in retaining it, we would hold our stock and not sell it.

Q. You understood, then, Mr. Hill, that the control of the Northern Pacific, so far as the board of directors was con- 532
cerned, was in J. Pierpont Morgan & Co., did you not?

A. He had selected the board of directors, but there are many men there who are independent of anybody's control.

Q. Didn't you, in your testimony, a moment ago, use the words, "If the control of the Northern Pacific was to be retained?" Now, it was your understanding that it was then in J. Pierpont Morgan & Co.?

533 A. That is the control of it through an ownership of the majority of the stock.

Q. Well, they had up to that time, Mr. Hill, J. Pierpont Morgan & Co. had elected—that is, the voting trust of which he was the head had named or elected the board of trustees?

A. The voting trust didn't own the stock.

Q. I understand, but they elected?

A. Yes, sir.

Q. And, then, the board of trustees had been named by the voting trust?

A. Yes, sir; that is right.

534 Q. Now, Mr. Hill, at the time when you had this understanding and agreement with J. Pierpont Morgan & Co., that the Northern Pacific preferred should be retired, that agreement and understanding necessarily contemplated corporate action, did it not?

A. By whom?

Q. By the Northern Pacific Railway Company.

A. Oh, yes, sir; that is the only way it could be retired.

Q. And at that time you necessarily had in mind action to be taken by the board of directors, did you not?

A. Yes, sir.

535 Q. And you then assumed that if the majority of the common stock, which was then held by yourself and associates and J. Pierpont Morgan & Co., should request the board of directors to pass that resolution that it would be done, did you not?

A. Well, speaking for myself, I hoped it would be done.

Q. I say, in those negotiations you assumed that it would be done, did you not?

A. I trusted it would be done.

Q. Now, you were aware that the stock could not be re-

536 tired; that is, there could be no compulsory retirement until the 1st of January, 1902?

A. That is correct; that is the date fixed.

Q. And I suppose you were aware that at the annual meeting which was to take place in October, of the stockholders, that at that annual meeting Mr. Harriman and his associates would have a majority of the common and preferred stock; that is, if they presented it and voted it?

A. If they presented it and voted it, and the meeting was held in October. The meeting date was a matter of the by-laws, which might be changed and amended at any time. 537

Q. That is just what I am getting at. At that time, Mr. Hill, you had in mind, if necessary, to postpone the annual meeting of the stockholders beyond January 1, did you not?

A. It might have been done.

Q. I want to know, Mr. Hill, if, as a matter of fact, you had that in mind at the time that it could be done?

A. It had occurred, and was discussed.

Q. So that if it was necessary, in order to accomplish the purpose of the retiring of the Northern Pacific preferred stock, and you succeeded in getting a resolution passed by the then board of directors, the same board of directors could postpone the annual election beyond the 1st of January, 1902, at which time the retirement would take place? 538

A. Now, let me say that that was not discussed by me with Morgan & Co.

Q. Well, was it discussed by you with anybody?

A. With my own counsel, as a step that might be taken. My recollection is that it wasn't necessary to take any steps.

Q. But, Mr. Hill, let me ask you this, if you have finished. 539

A. I was going to say that my recollection is that it was not necessary to bring that up or discuss it with Morgan & Co., because the Harriman interests sent in their proxy to vote their stock to Morgan & Co., as they agreed to.

Q. I am getting at things that were in your mind before Mr. Morgan was selected, Mr. Hill, as arbitrator. I want to follow that up with this question, Mr. Hill: Did you have in mind, or were you advised by your counsel, that if action be taken by the then board of directors, and an annual election of stockholders should be held as provided by the then by-laws in October, that it would be possible for the new board which might be named by the Harriman interests to cancel and annul any resolution of retirement? 540

A. That matter and any consultation with counsel was after my return from New York subsequent to my visit there during the first of May.

Q. Now, about what time was that?

A. Oh, I should think toward the last of May or first of June.

541 **Q. What I want to get at is, you did have in mind some time the last of May or first of June, whatever time it was you got home or consulted with your counsel—you did have in mind the possibility of the Harriman interests dominating the election or controlling the election of the board of directors at the next annual meeting, did you not?**

A. Certainly.

Q. And you did have in mind, and you were advised by your counsel, that if that should be done the directors so named would have the power to annul or cancel any action looking
542 **to the retirement of the Northern Pacific preferred which might be taken by the then board of directors?**

A. They might have attempted to annul it.

Q. I don't care so much about the rule of law of the case as I do what was in your mind and what was called to your attention. I ask you now if the possibility of such action was not present in your mind at that time?

A. It was called to my attention and was present during the summer, I suppose. It was a subject I thought very frequently of.

Q. Is it not a fact, Mr. Hill, that you went ahead upon the
543 **assumption that the then board of directors would be favorable and would pass such resolution as might be necessary to retire the preferred stock, and that the then board of directors, if necessary, and they were so advised and requested by you and J. Pierpont Morgan & Co., and your associates, that they would postpone the annual election until after January 1, 1902?**

A. I don't recall that question of postponement coming up between myself and the members of the board of directors of the Northern Pacific at any time, or being discussed with them.

544 **Q. Did you discuss it with anybody?**

A. I remember talking it over and having it discussed with counsel; that is, that such course might be taken.

Q. Mr. Hill, is it not true, and was it not your then understanding, that the mere control of the forty-two millions of common stock by you and your associates and Mr. Morgan, and the mere control of the board of directors as then constituted, provided an annual election should be held in Octo-

ber, would not give you and your associates and J. Pierpont 545
Morgan & Co. and their associates the final control or the control after the annual election of the Northern Pacific Railway Company?

A. About forty-one or forty-two millions certainly was not a control of one hundred and fifty-five, and if the preferred stock voted, with the Harriman stock against us, we would be in a minority.

Q. I say if you had—that is not an answer to my question, Mr. Hill. As the matter then stood on May 9, you and your associates and J. Pierpont Morgan & Co. and their associates 546
held between forty-one and forty-two millions of the common stock of the Northern Pacific Railway Company?

A. Yes.

Q. Now, assuming that you had a majority of the board of directors, as then constituted favorable to the proposition to retire the preferred stock of the Northern Pacific Railway Company, it was necessary, in addition to that, to carry out the plans of retirement to postpone, in case the seventy-eight millions of common and preferred held by Harriman were left outstanding, it would be necessary, in order to carry out your plan of retirement, to postpone the annual election, or might 547
be necessary, beyond the 1st of January, 1902?

A. It might be necessary to postpone it if the preferred stock was to be retired on the 1st of January, because at that time, I think prior to that time, notice had been given of an intention to classify the board of directors, electing for one, two, and three years, and it would have been manifestly unjust for the preferred stock to have voted to elect a board of directors when that stock would cease to exist on the 1st of January, a few months after electing the board of directors who were going to manage that property for two or three years. 548

Q. Yes, but that would be upon the assumption that your plan of retirement was to be carried out.

A. Why, of course.

Q. Now, I am trying to develop the other side of this programme a little. I want to know, Mr. Hill, if, as a matter of fact, these various considerations that we have just been discussing did not influence you and your associates and J. Pier-

549 pont Morgan & Co. to open negotiations for the purchase of the Harriman stock, the seventy-eight millions of common and preferred?

A. I did not open negotiations for the Harriman stock, or for its purchase, at any time.

Q. Did that influence J. Pierpont Morgan & Co., to your knowledge?

A. I do not know that it did. I always felt that that stock could be retired and that any attempt to prevent its retirement would fail, and I had the fullest confidence that it was a
550 contract that could be enforced in any honest court.

Q. Now, Mr. Hill, I want to ask you this—if you didn't also realize, right in that same connection, that in order to carry out your plan of retirement it might become necessary to postpone the annual election which was then fixed for October, 1901?

A. I have testified repeatedly that the postponement of the election was suggested as one step by counsel.

Q. And one step that would be necessary, or might become necessary, in order to accomplish your plan of retirement?

A. It might become necessary.

551 Q. Wasn't that proposition, Mr. Hill, with reference to the necessity of postponing the annual election, discussed with Mr. Stetson, of New York, who was counsel for J. Pierpont Morgan & Co.?

A. I don't recall any discussion of that kind.

Q. Do you recall now whether or not it was discussed with J. Pierpont Morgan & Co., or with any of his partners?

A. I don't recall that discussion. I think I may have mentioned it to them as a suggestion or an opinion from our counsel in the West.

Q. The counsel of the Great Northern road, Mr. Grover?

552 A. Yes, Mr. Grover. I am very apt to go to him for advice on legal matters on almost any subject.

Q. Mr. Hill—I don't remember whether I asked you or not—do you remember at what price the seventy-eight millions of common and preferred of the Harriman Northern Pacific stock was sold to J. Pierpont Morgan & Co. at?

A. I do not recall the figure.

Q. You did know at the time, did you?

A. I think likely, but I can't recall the figure. I don't 553
know that I knew exactly what the figure was. I don't know that I ever knew.

Q. I think you have already testified that one particular member of the firm of J. Pierpont Morgan & Co. conducted the negotiations for the purchase, did you?

A. Yes, sir.

Q. And what was his name?

A. Robert Bacon.

Q. He is a member of the firm of J. Pierpont Morgan & Co.?

A. Yes, sir. 554

Q. And he lives in New York?

A. Yes, when he is at home; he has been away since fall.

Q. Mr. Hill, from May 9 to January 1, we will say, 1902—May 9 preceding January 1, 1902—what amount of stock during that period, common and preferred, in the Northern Pacific did J. Pierpont Morgan & Co. hold, if you know, approximately? I don't expect you to state it accurately, but, if you can, state it approximately.

A. Oh, twenty-two to twenty-seven or twenty-eight million.

Q. And that was, of course, independent of the Harriman purchase? 555

A. Yes.

Q. Do you know how much of that, Mr. Hill, was preferred?

A. I am counting common.

Q. All common?

A. Yes.

Q. Now, did J. Pierpont Morgan & Co. subscribe for their proportion of the certificates of indebtedness which were issued by the Northern Pacific Railway Company?

A. I think that Morgan & Co.—in fact, I know that Morgan & Co. sold some of their stock in the meantime.

Q. How much, Mr. Hill, as near as you can state? 556

A. Oh, I should say ten or twelve million.

Q. Now, on January 1, 1902, how much stock of the Northern Pacific Railway Company did J. Pierpont Morgan & Co. hold—about?

A. I don't know that they held any.

Q. Well, what had become of it?

A. The Northern Securities Company had bought it.

557 Q. What I am getting at, Mr. Hill, is, how much common stock did they turn into the Northern Securities Company in exchange for Northern Securities Company's stock?

A. I couldn't say without getting knowledge from the books.

Q. Couldn't you approximately?

A. No. The company is new and I have never seen a list of the stockholders of the Northern Securities Company; never had been made up to the time I was last in its office.

Q. Well, do you know approximately how much of the stock
558 of the Northern Securities Company is now held by J. Pierpont Morgan & Co., or by any of the partners of that firm?

A. I do not know how much.

Q. Well, do you know whether it is five million or forty million?

A. I know it is not forty and it might be five and it might be ten.

Q. Well, to get at the matter shortly, you don't know whether it is five or three times five?

A. I do not.

Q. You cannot give us any approximation of the amount?

559 A. No. I have no recollection of the list of stockholders, and I think it is Morgan & Co.'s custom to carry any stock they hold in other names.

Q. Well, at the time, on or about the 1st of January, or previous to the 1st of January, after the organization of the Northern Securities Company and the starting of the business of that company, did you not know approximately the amount of common stock held by J. Pierpont Morgan & Co. which it was their intention to exchange for Northern Securities Company stock?

A. About. In fact, when the stock was exchanged I knew
560 about what they held.

Q. And about how much was it?

A. Oh, I should say twelve or fifteen millions.

Q. And that so far as your present recollection goes was all the stock which J. Pierpont Morgan & Co. or any of the partners of that company had to exchange for Northern Securities Company stock?

A. No; they had the so-called Harriman stock outside of 561
that.

Q. I am eliminating that.

A. Outside of that, that is my recollection of about what Morgan & Co. had. That figure is not intended by me to be more than an estimate, and it is the best information I have on the subject.

Q. I understand. At the present time there is outstanding of the common stock, new and old issue, of the Northern Pacific Railway Company, one hundred and fifty-five millions, is there? 562

A. Yes, sir; that is the exact figure.

Q. And what part of that one hundred and fifty-five millions of stock is now held by the Northern Securities Company?

A. One hundred and fifty-two or one hundred and fifty-three, or possibly more, millions.

Q. I will ask you this in this connection, something I forgot yesterday. The Great Northern Railway Company is and always has been a corporation organized under the laws of the State of Minnesota, is it not, Mr. Hill?

A. Yes, sir. 563

Q. And its authorized capital stock at the present time, and on the 30th day of December, 1901, was what amount?

A. Its capital stock was one hundred and twenty-five million.

Q. And that stock is not divided into common and preferred?

A. No, sir. It is called preferred, but there is no common.

Q. There is only one class and never has been but one class of stock in the Great Northern?

A. That is right.

Q. And on the 30th day of December, 1901, how much of 564
the authorized capital stock of the Great Northern road had been issued and was outstanding?

A. Probably one hundred and twenty-three million. It may be a fraction more; something less than one hundred and twenty-five.

Q. Mr. Hill, on the 30th day of December, 1901, what

565 amount par value of the capital stock of the Great Northern road was held by the Northern Securities Company?

A. Possibly forty million.

Q. And by saying possibly forty million do you wish to be understood as saying that that is as near as you can fix it?

A. That is as near as I can fix it at that time. I think that that is very near what was held at that time.

Q. And at the present time what is the holding of Great Northern stock by the Northern Securities Company?

A. I don't know.

566 Q. Well, do you know that it is much larger, Mr. Hill?

A. It is some larger, but not a great deal larger. It may be five or six millions more.

Q. So, that at the present time the holding of the Great Northern stock by the Northern Securities Company is not exceeding forty-five or forty-six million?

A. My information comes from the office of the company in New York, and it is put somewhere less than fifty million; between forty-five and fifty.

Q. Now, Mr. Hill, on the 30th day of December, 1901, how much stock did you own and hold yourself individually in the 567 Great Northern Railway Company par value?

A. Between two and a half and three million dollars.

Q. And had you, previous to that time, exchanged any of your Great Northern stock for Northern Securities Company stock?

A. Yes.

Q. Well, I will ask you this: What time did the Northern Securities Company commence issuing its stock? When did it first commence to do business?

A. It commenced to do business about two or three days after it was organized.

568 Q. Mr. Hill, can you fix the date for us about when?

Mr. Grover. That is pretty nearly right, perhaps three or four days; very shortly.

Mr. Young. You have the circular there which is dated two or three days after.

A. That is substantially correct.

Mr. Lancaster. This appears to have been filed November

13, 1901, with the secretary of the state of New Jersey, and 569
under the laws is there any publication down there?

Mr. Grover. No.

Mr. Lancaster. It goes into effect immediately?

Mr. Grover. Yes.

Q. At the time when the Northern Securities Company commenced doing business, how much stock par value in the Great Northern Railway Company did you own and hold?

A. I couldn't give the exact figure.

Q. Well, approximately, Mr. Hill?

A. Oh, $11,000,000 to $12,000,000.

Q. On the 30th day of December, 1901, you had exchanged 570
that stock, excepting two or three millions, into stock of the Northern Securities Company, had you?

A. Yes; substantially.

Q. And at the present time, how much stock do you own and hold in the Great Northern Railway Company?

A. Two and a half or three millions.

Q. Do any of your associates at the present time own and hold any of the stock of the Great Northern Railway Company?

A. I have not looked at the stockholders' list of the Great 571
Northern Railway Company recently, and do not know.

Q. Well, do you mean to say that you do not know whether or not your associates have exchanged all of their Great Northern stock for Northern Securities Company?

A. I think Mr. Kennedy has exchanged all of his; I think he told me so, and I don't know whether Mr. James has or whether he has not. I don't know whether Mr. Thorne has or whether he has not. I think Mr. Baker has.

Q. Mr. Hill, do you know whether or not the amount held by the Northern Securities Company, which you say is forty-five or fifty million of the Great Northern Railway Company, 572
together with what is held by you and your associates, constitute a clear majority of the outstanding capital stock of the Great Northern Railway?

A. I never made the calculation and could not answer it.

Q. You mean to say, then, that at the present time you don't know whether you and your associates, the Northern

573 Securities Company, own and control a majority of the Great Northern Railway stock or not?

A. I don't know that the Northern Securities Company—I know they don't.

Q. I assume that forty-five or fifty is not a majority of one hundred and twenty-three, but what I am getting at is if you know whether or not the stock held by the Northern Securities Company, together with the stock held by yourself and your associates, constitute a clear majority of one hundred and twenty-three million?

474 A. Well, if I call my associates the shareholders of the Great Northern Railway——

Q. I thought we had that well defined yesterday afternoon; you named them. I refer to them.

A. Those who were named as my associates yesterday would not have a control, but the shareholders of the Great Northern Railway have always been very loyal supporters of the board of directors and sent their proxies when called upon, and I have no doubt they would act practically as a unit.

Q. And act practically as you would recommend?

A. I think they always have been ready to.

575 Q. Then it has not been necessary up to the present time for you to locate absolutely a majority of the capital stock of the Great Northern Railway Company; is that it?

A. I don't know why it should be necessary.

Q. I am not asking for the reasons, I am simply asking for the fact.

A. Well, it is the best answer I can give. Now, my judgment or opinion of what is necessary is a difficult question to answer. If I had thought it was necessary I suppose I could have had a list made.

Q. You named over yesterday, Mr. Hill, a list of some ten
576 or twelve, I think, names of gentlemen, of which the following is a copy: John S. Kennedy, D. Willis James, S. Thorne, R. S. Sterling, Oliver Payne, Jacob Schiff, H. W. Cannon, Lord Strathcona, and Lord Mount Stephens, and I think you testified that those men, whom you designated as your associates, had for a long time held a large amount of the stock of the Great Northern road and had always acted together in the management and control of that road.

A. That is not correct. 577

Q. Well, will you correct it?

A. Yes, sir. Those were my associates who had purchased the Northern Pacific stock. Jacob H. Schiff was a director, but not at any time of the old promoters. He was a director, and his firm owned or represented an amount of stock. Not a very large amount.

Q. It will take a little time, but let's get it straight. What I want to get at is the names of the individuals to whom you have referred several times in your testimony as being your associates in the Great Northern, men some of whom were 86 years of age, and some 80, etc. Now, let's have their names. 578

A. The man 86 years of age is Johnston Livingston, and Lord Strathcona was born in 1820.

Q. Now, we are talking about Great Northern associates?

A. Entirely.

Q. And who else?

A. Mr. Thorne, Mr. Sterling, Lord Mount Stephens, Willis James, Mr. Kennedy, and Baker was a Great Northern stockholder for many years, and Mr. Cannon, and Mr. Payne.

Q. Do you know whether Lord Strathcona has any stock in the Great Northern road at the present time? 579

A. I do not. I think his stock is turned in, but that is only an opinion.

Q. You don't know whether it is turned in or not?

A. No; I think it is.

Q. You said Mr. Kennedy exchanged all of his?

A. I thing he told me he had.

Q. Do you know whether Mr. Baker has?

A. I have the impression that he has. I don't know that he has.

Q. Do you know whether Mr. James has?

A. I think he has. 580

Q. All of the stock?

A. I think so.

Q. Mr. Thorne?

A. I could not say as to Mr. Thorne; he has been sick for some time.

Q. Mr. Clough?

581 A. Mr. Clough, I don't know. I think Mr. Clough's holding isn't large.

Q. Mr. Perkins?

A. There are two gentlemen of that name.

Q. Well, you only gave us one here as being your associate in the Great Northern?

A. I did not.

Q. No; you did not give that name; that is right.

Mr. Kellogg. There is a Burlington Perkins and a Morgan & Co. Perkins.

582 A. That is right.

Mr. Bulkley. Which is which?

Mr. Young. Charles E. Perkins is the president of the Burlington.

Q. Mr. Hill, do you know whether or not there is any stock of the Great Northern Railway Company that is up in the hands of the trustees or a trustee to be exchanged at any time?

A. I know of none.

Q. Are there any agreements at the present time of which you have any knowledge between any stockholder and the 583 Northern Securities Company for the exchange of stock in the future?

A. None whatever.

Q. Mr. Hill, the stock which you hold now, which you hold out from the amount which you had on hand at the organization of the Northern Securities Company, is that stock under any agreement of any kind, to be turned into the Northern Securities Company?

A. No, sir; it was held out because it was collateral security for borrowed money at the time and it was not as easy to turn it over as it might be after the debt was paid.

584 Q. And is it your purpose and intention, Mr. Hill, to turn that over to the Northern Securities Company as soon as it is released?

A. It is released, I think, now.

Q. Well, is it your present intention to turn over and exchange the Great Northern stock for Northern Securities Company stock?

A. Well, I may have a little sentiment to induce me to hold 585
some of the Great Northern shares. I might.

Q. That does not quite answer the question. I ask you what your present intention is?

A. I couldn't testify. I haven't any present intention.

Q. Is there at present any purpose or intention on the part of you and your associates to secure a majority of the Great Northern Railway Company's stock to be exchanged for Northern Securities Company stock?

A. I don't know what the intentions of my associates are in the matter; I have never consulted them in regard to it. I 586
suppose that any time we want any action of the Great Northern Railway Company the stockholders will be ready to do as they have in the past. Generally I have felt they were a very loyal set of people.

Q. You issued a circular to the stockholders of the Great Northern Railway Company?

A. Yes, sir.

Q. And in that circular you set forth the plan or scheme of exchange?

A. That is, the circular was issued by the Northern Securities Company. 587

Q. And it was signed by you as president of the Northern Securities Company, was it?

A. I think so.

Q. As a matter of fact, you sent that or directed that it be sent to all the stockholders of the Great Northern?

A. They were all given an opportunity to exchange their stock up to a certain date, I think the 22d of January. The circular speaks for itself; and you have a copy of it, for I saw it yesterday.

Q. We don't find it here, Mr. Hill. At the time when the Northern Securities Company was formed was it your expec- 588
tation and desire that a majority of the common stock of the Northern Pacific Railway Company should be turned into the Northern Securities Company in exchange for the latter company's stock?

A. In November?

Q. Yes, sir.

A. Yes.

589 Q. It was?

A. Of the Northern Pacific?

Q. Yes.

A. Yes, sir.

Q. Was it your expectation and desire at the time of the organization of the Northern Securities Company that a majority of the stock of the Great Northern Railway Company should also be exchanged for Northern Securities Company stock?

A. I think it was expected that a majority would be exchanged. At the same time the market price at that time was
590 considerably higher than the price the Northern Securities Company purchased the Great Northern stock at. It was a matter that was left to the shareholders.

Mr. Lancaster. Mr. Kellogg, we will offer in evidence Exhibit F.

Mr. Kellogg. All right. It is taken subject to the same objection, that it is irrelevant and immaterial. We waive the authentication.

Q. Mr. Hill, I will show you complainant's Exhibit G and ask you if that is a copy of the circular sent out by the North-
591 ern Securities Company, signed by you as president, to the stockholders of the Great Northern road in November last?

A. That is a copy of what was sent from the Northern Securities Company office in New York to its shareholders.

Mr. Lancaster. It is offered in evidence.

Mr. Kellogg. It is received, subject to the same objection.

Q. Mr. Hill, can you give the names of the directors of the Northern Securities Company?

A. I could not.

Mr. Lancaster. I have a list here, which I think is correct. Have you a list, Mr. Grover?

592 Mr. Grover. Yes, sir.

Q. Mr. Hill, will you give the names of the present directors of the Northern Securities Company?

A. James J. Hill, John S. Kennedy, George F. Baker, D. Willis James, E. T. Nichols, George W. Perkins, Robert Bacon, E. H. Harriman, Jacob H. Schiff, Samuel Thorne, George C. Clark, Daniel S. Lamont, Nicholas Terhune, James Stillman, and W. P. Clough.

Q. You are president of that company and have been since its organization, have you not? 593

A. Yes, sir; I have been president since it commenced to do business. I think there was a president ahead of me.

Q. Were the officers named in the articles?

A. I think so.

Q. The first vice-president is John S. Kennedy?

A. Yes, sir.

Q. And the second vice-president, George F. Baker?

A. Correct.

Q. And the third vice-president, D. Willis James? 594

A. Correct.

Q. And the fourth vice-president, William P. Clough?

A. That is right.

Q. And the secretary and treasurer is E. T. Nichols?

A. That is correct.

Q. And was there an executive committee of the corporation?

A. Yes, sir; there is.

Q. And who is chairman of the executive committee?

A. The president is ex officio chairman, I think.

Q. And how many members constitute the executive committee? 595

A. Five or six.

Q. Can you give those names?

A. I could not. I think the four vice-presidents and E. H. Harriman.

Mr. Grover. The four vice-presidents and E. H. Harriman and the president ex officio.

Q. That would make six.

A. Well, I said five or six.

Q. Mr. Hill, to your knowledge, was there any Great Northern Railway stock on the market for sale? 596

A. Oh, yes, sir.

Q. Was it being dealt in?

A. There are quotations frequently.

Q. And has been since the 1st of January, 1901?

A. Yes, sir.

Q. Has there been any considerable dealings in Great Northern Railway stock since the 1st of January?

597 A. I don't recall it; it is never an active stock; it is never a stock that has been dealt in in large amounts, but I think I have seen seven or eight hundred shares in a day dealt in some times.

Q. Mr. Hill, can you state approximately the number of stockholders at the present time in the Great Northern Railway Company?

A. I could not without a list of them. Last fall when I last saw a list there was some fifteen or sixteen hundred, but that changes as the sales are made.

598 Q. You are unable now to give even an estimate of the number of stockholders outstanding?

A. I have no means of estimating the changes. The sales might increase the number of holders or it might reduce them. I have seen the number of shareholders up well toward two thousand.

Q. Where are the stock books of the Great Northern Railway Company kept?

A. New York.

Q. And do you have a copy, or substantially a copy, of that book in your office at St. Paul?

599 A. I suppose I could get one, if I wanted it.

Q. What I mean is, either the secretary or assistant secretary of the Great Northern road is at St. Paul?

A. The secretary, I think.

Q. And you have your assistant secretary reside in New York?

A. Yes.

Mr. Grover. The secretary is in New York.

Q. And the assistant secretary resides in St. Paul?

A. Yes, sir.

Q. What I want to know is, whether or not you keep in 600 your office at St. Paul a duplicate copy, or something serving the purpose of a duplicate copy, of your stock book?

A. I think once a year there is; whether it is oftener than that, I could not testify.

Q. And all transfers of stock are registered in your office at New York?

A. Yes, sir; they are made there; of course they are registered there.

Q. Now, the custody and control of the books of the Great 601
Northern Railway Company, then—the original books—are in the possession and control of the secretary, Mr. Nichols. Is that his name?

A. Mr. Nichols.

Q. In New York City?

A. The stock books are necessarily kept there.

Q. They are kept by Mr. Nichols, are they, as secretary of the company?

A. Yes.

Q. That is what I am getting at. Where are the records of 602
the official meetings of the stockholders and directors of the Great Northern Railway Company kept?

A. They are in New York.

Q. And are they in the custody of the secretary, Mr. E. T. Nichols?

A. Yes, sir. The directors' meetings are held in St. Paul.

Q. And the minutes of the directors' meetings are kept by whom?

A. Kept by the secretary in St. Paul.

Q. That is the assistant?

A. By Mr. Sawyer. 603

Q. He is the assistant secretary, is he?

A. He is either secretary or assistant. One is assistant treasurer and secretary, and the other is assistant secretary and treasurer.

Q. But Mr. Sawyer has the custody and control of the records of the directors' meetings in St. Paul?

A. Yes, sir.

Q. Well, we will want to clean up a little and ask a few more questions. We had better take an adjournment until 2 o'clock.

By consent of all parties, a recess was taken at this time 604
until 2 o'clock in the afternoon.

Thursday afternoon, February 20, 1902, at 2 o'clock all parties appeared pursuant to the adjournment, represented by the same solicitors, and the following proceedings were had, to-wit:

JAMES J. HILL, being recalled for further examination by Mr. Lancaster, testified as follows:

605 Q. Mr. Hill, is there a voting committee of the Northern Securities Company?

A. I think not; I don't recollect any.

Q. Has there been any provision made for a committee to represent the Northern Securities Company in any stockholders' meeting of either the Great Northern or Northern Pacific Railway Company?

A. No committee that I know of. I think there is a proxy.

Q. To whom?

A. I don't recall to whom it ran, but I think there is a
606 proxy. I think the board appointed a proxy to vote stock in case any occasion for voting it should arise.

Q. Do you know whether or not that proxy is held by one individual or by a committee?

A. I don't recall.

Q. Has that proxy been actually issued?

A. That I don't know.

Q. And does it cover the stock of the Great Northern as well as the stock of the Northern Pacific?

A. They would be different proxies.

Q. I mean, does the provision with reference to the proxies
607 cover both classes of stocks?

A. I think so.

Q. And does the proxy run to the same person?

A. I think not; I think it is a separate proxy.

Q. Are you able to give the name or names of the parties holding either proxy or both?

A. I think that I am one of the proxies for the Great Northern.

Q. And who else with you?

A. I don't recall. Possibly Mr. Nichols is the alternate.

Q. And who is the party holding the proxy for the Northern
608 Pacific Railway Company?

A. I don't recall.

Q. Is it you, Mr. Hill?

A. I am not. I think that Colonel Lamont, vice-president, who is resident and in the office of the Northern Pacific, I think that he is the proxy for the Northern Pacific, but I am not certain; and as to the alternate I don't know.

Q. Has any stock of the Northern Securities Company been 609
issued and sold to any individual or individuals for cash?

A. I couldn't testify as to that.

Q. Well, has the Northern Securities Company any assets excepting the stocks of the Northern Pacific Railway Company and of the Great Northern Railway Company?

A. It has.

Q. What are they?

A. Other stocks or securities.

Q. Of what companies?

A. Well, for one, it has stocks or stock in the Crow's Nest 610
Coal Company.

Q. How much?

A. I don't remember. I think 25,000 shares.

Q. From whom did it acquire that stock?

A. The stock was purchased under my direction from people in Canada and was carried and turned over.

Q. Did the Northern Securities Company pay cash for it?

A. I think so. This transaction was ready to close when I left New York. How far it has advanced, I don't know.

Q. At what price was the 25,000 par value put in at—25,000
shares, did you say? 611

A. Twenty-five thousand shares, I think.

Q. At a par value of $100?

A. I am not sure whether it was twenty-five or fifty; I am not sure which. It was less than a hundred.

Q. And for that you say the Northern Securities Company paid cash?

A. Yes.

Q. It didn't issue its own stock?

A. It didn't issue its own stock direct.

Q. Did it indirectly?

A. It might sell its stock to provide the money. 612

Q. Well, are you able to state, Mr. Hill, how much cash to the company that transaction of the Crow's Nest Coal Company involved?

A. I do not know how much.

Q. Approximately.

A. I do not know how much of that stock it has sold; that is, how much the securities company has sold for cash.

613 Q. Has it sold any considerable amount?

A. I think it has.

Q. About how much?

A. I do not know.

Q. Well, what do you regard as a considerable amount? You say it has sold a considerable amount.

A. Oh, it would amount to probably $3,000,000 or $4,000,000.

Q. That is, the Northern Securities Company has sold its own stock to various parties to the extent of $3,000,000 or $4,000,000 for cash?

614 A. It either has or intends to. It either has or expects to.

Q. I am confining it up to date, Mr. Hill, to what has been done.

A. Well, I couldn't say, because I haven't been in the office for some time.

Q. Then, so far as your own knowledge goes, Mr. Hill, are you able to say that the company has, up to date, in fact, bought any property for which it has paid cash up to the present time?

A. It has agreed to buy property for which it must pay cash, and whether that transaction has been completed since
615 I left New York or not I couldn't say.

Q. Well, has it purchased any other property or any other stock outside of the stock of the Northern Pacific and the Great Northern except this Crow's Nest Coal Company?

A. Yes.

Q. What other?

A. Oh, other coal companies; two.

Q. Two other coal companies?

A. Yes, sir; one of them situated on Puget Sound; the other east of the Rocky Mountains.

Q. That is, other independent companies—independent of
616 the Northern Pacific or the Great Northern?

A. Yes, sir; and it expects also some other coal companies and mineral holding ones.

Q. Has it, up to date, Mr. Hill, paid out any cash for these two other coal companies that you have mentioned?

A. I couldn't say.

Q. How much stock of the Northern Securities Company has been issued up to date?

A. I couldn't say. 617

Q. Can you say approximately, Mr. Hill?

A. Not without access to the books.

Q. Well, have you any present information as to the approximate amount of stock actually issued?

A. I should say it was over 230,000,000 or 240,000,000. It may be over 250,000,000.

Q. And 152,000,000 or 153,000,000 I think you testified of that amount of stock issued was issued for the acquirement of the Northern Pacific stock?

A. Yes, sir.

Q. At 115? 618

A. Yes, sir.

Q. So that as a matter of fact it would be considerably more than 152,000,000 or 153,000,000 of the Northern Securities Company stock?

A. Yes.

Q. Probably 165,000,000 or 170,000,000 of Northern Securities Company?

A. Yes, sir; somewhere from 170,000,000 to 180,000,000.

Q. Of the Northern Securities Company stock which it was necessary to issue in order to take care of 152,000,000 or 153,000,000 of the Northern Pacific? 619

A. Yes, sir.

Q. Mr. Hill, were the two coal companies that you referred to, one on Puget Sound and one elsewhere I think you stated, were those companies before they were purchased in whole or in part by the Northern Securities Company owned or controlled by either the Northern Pacific or Great Northern?

A. The Crow's Nest Coal Company was not.

Q. I didn't ask you about that one, but the ones that you mentioned, one of them I think you said on Puget Sound——

A. And one of them east of the mountains? 620

Q. Yes.

A. Well, they were in the interest of the Great Northern.

Q. Both of them?

A. Yes.

Q. And did the Northern Securities Company acquire those properties or the stocks for those properties from the Great Northern Railway Company?

621 A. No.

Q. From whom did they acquire them?

A. I have not testified that they did more than expect to acquire them.

Q. You are not able to say, then, that up to the present time they have actually acquired them or whether they have any actual agreement for them?

A. They have an expectation, and it is intended to acquire them, but whether that has been carried out I am unable to say.

622 Q. Well, do you say expectation, Mr. Hill, because of any agreement outstanding for their purchase?

A. No special agreement. In regard to these two, I explained the matter to the board of directors and they thought it was a proper thing for them to acquire these properties, and additional properties of that character. In other words, that they should as a matter of policy seek to secure a supply of fuel for the company and for the country served by the company's lines.

Q. Mr. Hill, do you mean by what you have testified to that the stocks of these two coal companies—one on Puget Sound
623 and one east of the mountains—which were held in the interests of the Great Northern, that those stocks are so held that they may at any time be turned over to the Northern Securities Company?

A. The Northern Securities Company could buy either the stocks or the property.

Q. That is, the present arrangements are such that they can be delivered to the Northern Securities Company whenever it is desirable to carry out the scheme?

A. I think so. The owners would have to agree to sell before the purchasers could close a bargain, but I think that
624 they would agree.

Q. And is that the same with reference to the Crow's Nest?

A. The Crow's Nest is a matter of stock in an organized company. It is a foreign company.

Q. I understood you to say you were unable to state whether it had actually been transferred or not?

A. I so stated.

Q. That you are unable to state whether or not the stock has been transferred? 625

A. That is right, but I believe that the Crow's Nest stock is in a position where it could be transferred, and it may have been transferred since I left New York.

Q. Are the other two coal mines at the present time in corporate companies?

A. I think so.

Q. Mr. Hill, Mr. E. T. Nichols is the secretary and treasurer of the Northern Securities Company, is he not?

A. I think so; yes, sir.

Q. And where does he reside? 626

A. His residence or his business residence?

Q. Well, where his actual residence is?

A. New Jersey.

Q. And what town or city?

A. He lives near Morristown.

Q. And where is his official residence as treasurer of the Northern Securities Company?

A. In New York.

Q. And is the office of the treasurer of the Northern Securities Company in New York? 627

A. The main office is in New Jersey.

Q. Does Mr. Nichols maintain his office as treasurer of the company in New Jersey?

A. No; he has an office in New Jersey, and the books of the company and the corporate office is in New Jersey. It also has an office in New York.

Q. And is the business of the company and the business of Mr. Nichols as treasurer of the company in New York?

A. Well, it would be in both places, I think. I am not familiar with the requirements of the New Jersey law. I may in time become so. 628

Q. Mr. Hill, do you know whether or not the Northern Securities Company is doing anything more than maintaining an official office in New Jersey?

A. Under the provisions of the New Jersey laws there are certain requirements in regard to local representation and office, and I know that at least these laws are complied with.

629 Now, how much further than that, and how much business is transacted there I couldn't say.

Q. Isn't it a fact, Mr. Hill, that the actual business of the corporation is carried on and conducted from the corporation's office in New York City?

A. The bulk of the business would be carried on there.

Q. Mr. Hill, at the time of the organization of the Northern Securities Company how much stock was then subscribed for?

A. I couldn't testify. I don't recollect.

Q. Do you know whether or not any stock was subscribed for?

630 A. My recollection is that there was.

Q. Do you know of your own knowledge whether or not any cash was actually paid into the Northern Securities Company on these subscriptions?

A. The Company in organizing required a considerable amount of cash.

Q. How much?

A. I don't recollect the amount, but a considerable amount. It might have been $3,000,000 or $5,000,000.

Q. Well, do you know of your own knowledge that $3,000,-

631 000 or $5,000,000 was actually subscribed?

A. I do not.

Q. Do you know of your own knowledge that $3,000,000 or $5,000,000, or any considerable sum, was actually paid in cash by any subscriber?

A. I do not.

Q. Do you know of your own knowledge that any cash was actually paid into the Northern Securities Company at the time of its organization, or immediately thereafter?

A. Yes, sir; I do.

Q. And how much?

632 A. I testified a large sum. It might have been——

Q. Mr. Hill, let us understand each other. I am not asking you what might have been, or what possibly was done, but if you know——

A. I cannot give you the amount.

Q. Then, so far as your own knowledge is concerned, you are unable to state that any cash was actually paid in at or

immediately subsequent to the organization of the Northern 633
Securities Company?

A. I know that cash was paid in at that time; I could not say how much.

Q. Well, if you know of your own knowledge, Mr. Hill, that any was paid, can you give us approximately the amount?

A. I said I could not.

Q. Do you know, Mr. Hill, whether or not the amount or amounts paid in in cash was anything more than was probably necessary or required to pay the expenses of incorporation, etc.?

A. Oh, there were other necessary payments and then to 634
carry out these other purchases would require a further sum of money.

Q. Mr. Hill, was it not the principal and practically the whole object and purpose of the Northern Securities Company to acquire stocks in the Great Northern and Northern Pacific and to pay for them by the issuance of its own stock? Wasn't that the principal and practically the entire object and purpose of the corporation?

A. That was not the entire object or purpose or sole reason.

Q. Was it practically the whole purpose and object? 635

A. If it was practically it would have been in fact, but it wasn't.

Q. Well, Mr. Hill, I want to know if at the time of the organization of the Northern Securities Company it was the purpose and intention practically of the company and of the officers who promoted it, and the individuals who promoted it, to purchase stock in the Great Northern Railway Company and the Northern Pacific Railway Company and to issue its own stock in payment therefor?

A. It was contemplated to buy other stock or other properties at the time. 636

Q. Yesterday afternoon, Mr. Hill, did you not testify that when the Northern Securities Company was first contemplated, and down to some time in the midsummer of 1901, the principal object of the organization of the Northern Securities Company was to hold together and combine the stock of your-

637 self and immediate associates in the Great Northern Railway Company?

A. That was in regard to the Great Northern Railway.

Q. And didn't you testify yesterday that subsequently and a little later on the matter was discussed, and I think you suggested Mr. Kennedy as the man who first proposed the taking in of the holdings of the Northern Pacific Railway Company?

A. Held by a small number of people who contemplated forming such a company which you might call a close corporation, and at that time not expected to be a majority of either company.

638

Q. Then later on, Mr. Hill, didn't you testify yesterday afternoon that that scheme was broadened so as to let in all the stockholders of the Great Northern that desired, or might desire, to come in and exchange their stock?

A. They were all given an opportunity to remain associated with the principal owners as they had been in the past.

Q. Then down to the time when the corporation was organized, November 13, 1901, weren't the principal objects and purposes of the incorporation of the Northern Securities Company to acquire the stocks of the Northern Pacific and Great

639 Northern, and to buy them—acquire them—by issuing its own stock in payment therefor?

A. The object is fairly stated in the circular; it gave the holders of the Great Northern the opportunity to come in if they so desired and to remain out if they so desired, and the holders of the Northern Pacific, the steps that were taken I do not recall, except for myself and a few immediate associates. The stock of the Northern Pacific was held by comparatively few holders; I think altogether, common and preferred, four or five hundred.

640 Q. On November 20, 1901, the Northern Securities Company, by you as its president, issued complainant's Exhibit G, which is a circular to the stockholders of the Great Northern Railway Company, and on or about the same date a similar circular was sent out to the holders of the Northern Pacific stock, wasn't there?

A. I don't recall.

Q. Wasn't there a circular sent out detailing the basis upon which the Northern Pacific stock could be exchanged?

A. I don't recall ever having seen such a circular. There might have been, but I don't recall ever having seen it, and it wouldn't have been likely that I would have seen it, except it might have been sent to me as a shareholder, and in that case Mr. Nichols, who represented me in such matters, would have received it. 641

Q. Did you see the circular sent out by the Northern Securities Company to the stockholders of the Great Northern Railway Company?

A. I signed it.

Q. Well, now, I am asking you if one was sent to the stockholders of the Northern Pacific Company? 642

A. Oh, you mean from the Northern Securities Company?

Q. Certainly; that is what I am talking about.

A. I don't know whether such a circular was sent or not. I think not. It is only a matter of recollection, but I don't recall any such letter sent. There might have been, but I don't recall it. There was a great many papers passing at those times and I haven't charged my mind with the details of them.

Q. Up to November 22, 1901, had the Northern Securities Company made any efforts or attempts to purchase or acquire any other stocks than those of the Northern Pacific and the Great Northern Railway Company? 643

A. It expected to, and the matter of acquiring other stocks was discussed.

Q. Had it actually taken any steps to acquire any other stock at that time?

A. Before its organization?

Q. No, sir; I am talking about after November 13, and on or about November 22.

A. I couldn't testify as to the date when these steps were taken. I think at the first meeting of the executive committee I outlined the matter of several properties that the company should own. 644

Q. Mr. Hill, are you able to give any other stocks or securities other than the stocks of the Great Northern and the Northern Pacific, the two coal companies, one on Puget Sound and one east of the Rocky Mountains, and the Crow's Nest

645 Coal Company in Canada in which the Northern Securities Company at the present time has any interest?

A. I don't know. I have not testified that it had an interest in all these.

Q. I understand, but you say it may have, or at least is expected to have.

A. Yes.

Q. Now, I ask you whether you can name any others?

A. Yes. Some very important and very large interests in iron ore and lands containing iron ore in this State.

646 Q. Now, those are in contemplation?

A. Yes, sir.

Q. Do you know of your own knowledge that the Northern Securities Company has in its possession or under its control or has bought or purchased any other stocks than those of the Northern Pacific and Great Northern?

A. I know that the purchase of other securities, bonds, and stocks have been contemplated, and I have not been in the office for some time, some weeks, and I do not know how far the transactions have been completed.

Q. Do you mean to say you don't know whether they have
647 any or not at the present time?

A. I don't know whether the transactions have been completed or not. I know it was the intentoin and expectation, and the matter was discussed—the acquiring of other securities. Some of these securities would be bonds and some of them stocks.

Q. Were any persons interested in the Northern Securities Company or in the organization of that company other than yourself and persons interested either in the Great Northern or Northern Pacific Railway companies?

A. None that I know of. I think the persons who were
648 actively interested were originally shareholders in the Great Northern, and most of them, if not all, had shares in the Northern Pacific at the time the company was organized.

Q. I will leave this for a moment, Mr. Hill. I want to go back to the Chicago, Burlington and Quincy Railroad Company for just a moment. Prior to May 9, 1901, was E. H. Harriman a director of either the Chicago, Burlington and Quincy

Railway Company or the Chicago, Burlington and Quincy 649
Railroad Company?

A. Prior to May 9 there was no Chicago, Burlington and Quincy Railway Company.

Q. Was he a director of the Chicago, Burlington and Quincy Railroad Company?

A. I think not. I feel very sure he was not.

Q. And the Chicago, Burlington and Quincy Railway Company was organized—I think you have stated, but I have forgotten—about what time?

A. During the summer of 1901. 650

Q. And Mr. Harriman, subsequent to May 9, was elected a director of the Quincy Railroad Company?

A. I think he was elected at the annual meeting.

Q. And about when was that held?

A. I don't remember.

Q. In the fall of 1901?

A. No; I should say it was before that.

Q. In the summer?

A. It might have been in the autumn.

Q. Well, it was subsequent to May 9?

A. Yes. 651

Q. And, Mr. Hill, at the time Mr. Harriman was elected a director of the Chicago, Burlington and Quincy Railroad Company, at the annual meeting of the stockholders which occurred, you say, probably in the autumn of 1901, the Great Northern and Northern Pacific Railway Company held and voted, through its proxies or voting committee, all the stock of the Chicago, Burlington and Quincy Railroad Company, did it not?

A. They authorized the stock to be voted.

Q. And the Great Northern and Northern Pacific Railway Company selected the board of directors for the Chicago, Bur- 652
lington and Quincy Railroad Company, didn't it?

A. Practically.

Q. Now, the Great Northern and Northern Pacific Railway Company also named the directors of the Chicago, Burlington and Quincy Railway Company, did they not?

A. Yes, sir. That is, as stockholders they did.

653 Q. And Mr. Harriman was, with the consent and approval or by the direction of the Great Northern and Northern Pacific, placed upon the boards of directors of each company?

A. Mr. Harriman was elected a director of the railway company when the board was elected, and also of the railroad company, I think, at the annual election.

Q. And at those meetings the two roads, the Northern Pacific and the Great Northern, held all the stock of both companies, did they not?

A. Well, they held a large majority of it.

654 Q. And they named the directors?

A. Practically.

Q. And at the same time the Northern Pacific and the Great Northern also named George J. Gould as a director of the railroad company?

A. Yes, sir.

Q. Both Mr. Harriman and George J. Gould were, and for some time previous had been, directors of the Union Pacific Railroad Company, or railway company, had they not?

A. Mr. Harriman had. Mr. Gould is usually interested in railroad properties in the West, and as far west as Colorado.

655 Mr. Boutelle: Missouri Pacific?

A. I think he used to be connected with the Union Pacific.

Mr. Boutelle. Missouri Pacific, I said.

A. Missouri Pacific; yes.

Q. Are you unable to state whether or not Mr. Gould, at the time he was elected a director of the Chicago, Burlington and Quincy Railroad Company, was a director of the Union Pacific?

A. I could not testify.

Q. Or do you know whether he was a director of the Southern Pacific?

656 A. I couldn't testify.

Q. Mr. Hill, you understood at that time and understood ever since that the Union Pacific owned and controlled a majority of the stock of the Southern Pacific?

A. I have never understood that it owned a majority of the stock. I knew that it had purchased, at least I was informed it had purchased, the Huntington interests, but that was not a majority.

Q. It was very nearly a majority, wasn't it? 657

A. I don't remember what the proportion was; it was a large block.

Q. Mr. Hill, the Union Pacific at that time owned and controlled the Oregon Short Line?

A. Yes, sir; I believe they did.

Q. And the Southern Pacific controlled the Central Pacific?

A. Well, I don't know which was considered the parent company, whether the Central controlled the Southern or the Southern the Central. It was one interest.

Q. I was going to say they were allied interests at this time, 658 in 1901?

A. I think they have been considered one interest for some time.

Q. That is, the Union Pacific and the Central Pacific and the Southern?

A. No; the Central and the Southern.

Q. And the Oregon Short Line had been controlled and managed by the Union Pacific?

A. For some time.

Q. Now, the Chicago, Burlington and Quincy Railroad Company was to a large extent—that is, through a large territory 659 —a competing line with the Union Pacific, was it not?

A. Well, in some places it was a competing line and in some places a connecting line.

Q. I say through a very large part of the territory it was a parallel and competing line with the Union Pacific, was it not?

A. I think through the largest territory it was a connecting line, but part of the territory it is certainly a competing line.

Q. During the spring and summer and fall of 1901, did you understand that Mr. E. H. Harriman was the chairman of the executive committee of the Union Pacific and a member of its board of directors? 660

A. Yes, sir.

Q. And also president of the Oregon Short Line?

A. I didn't know who was president of the Oregon Short Line.

Q. Were you informed that he was president of the Oregon Short Line?

A. I don't know. I understood that the Oregon Short Line

661 was controlled by the Union Pacific, and whoever was president or was not president would be controlled by that company.

Q. Did you understand that Mr. Harriman was chairman of the executive committee of the Oregon Short Line and Navigation Company?

A. I did not; no.

Q. Did you understand that that company was allied to the Union Pacific?

A. I have always understood, for a year and a half, I might say—possibly longer—that the stock was largely owned by
662 the Union Pacific, both common and preferred.

Q. And did you understand at that time that Mr. Harriman was president of the Southern Pacific?

A. I did not, and don't know that he was. I do not recall when he was elected president of the Southern Pacific, but I am only speaking from recollection.

Q. Mr. Hill, in your testimony before the Interstate Commerce Commission at Chicago I think you gave two reasons why you refused the request of Mr. Harriman to join in the purchase, with the Northern Pacific and the Great Northern,
663 of the Chicago, Burlington and Quincy Railroad Company, and one of these reasons was that such purchase by the Union Pacific would be illegal.

A. That is correct.

Q. And was that opinion based on the assumption of fact that the Union Pacific was a parallel and competing line to some extent with the Chicago, Burlington and Quincy Railroad Company.

A. That was a reason. The Union Pacific Railway Company could not properly become an owner of that stock or join in the purchase without infringing on the law.

664 Q. And the laws of what states, as you understood it?

A. I don't know the States. I think Nebraska, and I think most of the Western States.

Q. So that at that time, Mr. Hill, you must have had in mind and believed that to a very large extent, at least, the Union Pacific and the Chicago, Burlington and Quincy Railroad Company were parallel and competing lines?

A. A portion of the property is a parallel and competing 665
line, then and now.

Q. That is, the two lines, the Union Pacific and the Burlington?

A. Yes, sir.

Q. Prior to May 9 was Mr. Harriman ever to your knowledge a director of the Northern Pacific Railway Company?

A. Not that I know of.

Q. And was he elected subsequent to May 9 as a director of the Northern Pacific Railway Company?

A. On Mr. Morgan's return I think Mr. Harriman was one 666
of the names that he suggested or designated as directors in the Northern Pacific.

Q. Now, subsequent to May 9, was there any undertaking or agreement or negotiations between you or your associates or J. P. Morgan & Co. and his associates, to your knowledge, with Mr. Harriman by which it was understood and agreed that Mr. Harriman should become a director of the Chicago, Burlington and Quincy Railroad Company, and of the Chicago, Burlington and Quincy Railway Company, and of the Northern Pacific?

A. No such agreement was discussed or made. Mr. Morgan 667
on his return named these parties as the board of directors for the Northern Pacific without any agreement or pledge or promise.

Q. Without any understanding that Mr. Harriman should be represented upon any of those boards?

A. I think there was a clear understanding or statement by Mr. Bacon that Mr. Harriman's name was not to come up, not to be considered, and also Mr. Schiff's, but this is mere hearsay. But we have been compelled to give a good deal of hearsay.

Q. We will allow you to give some more, if you wish to. 668

A. All right. When Mr. Morgan came back, I think Mr. Morgan said: "Here, we will put Mr. Harriman on this board, and Mr. Schiff, too, to show them we are not afraid of them."

Q. Mr. Hill, after these cessations of hostilities, or supposed hostilities, between the Harriman faction and the Hill faction as we understood it this morning, this putting of Mr. Harriman upon the board of directors of the Chicago, Bur-

669 lington and Quincy Railway Company and of the Chicago, Burlington and Quincy Railroad Company, and upon the Northern Pacific Railway Company was simply an act of magnanimity on the part of the Hill-Morgan faction; was that it?

A. There was a good deal of fear professed by Mr. Harriman and Mr. Schiff that the Northern lines taking the Burlington would be too strong. I don't know but they feared we would swallow them or something, and they professed great fear that the Burlington was going to build through to California and to southern California and what is known as the
670 W. A. Clark road, now building from Los Angeles into Utah. I remember being asked by some of them if our company or the Northern Pacific or the Burlington were connected with it or expected to be. I told them no; we were developing an entirely different section of the country, and we were not anxious to extend into southern California or San Francisco, and I think that largely led to those people being put into the Burlington board that they might be witnesses; that there was nobody going to dig pitfalls, etc., for them in that country. Now, I think that is why they were put there.

Q. Mr. Harriman at that time had no stock in the Burling-
671 ton, had he?

A. I don't think Mr. Harriman then or since has any stock in the Burlington except to qualify him as a director.

Q. And he had none in the railway company?

A. No, sir.

Q. And at the time he was elected a director of the Northern Pacific he had either sold or had contracted to sell all of his stock to J. Pierpont Morgan & Co.?

A. I don't think he had contracted to sell any of it; he contracted or promised verbally to give his proxy to Mr. Morgan to vote it at the succeeding election and carried that agree-
672 ment out, and he subsequently sold all of his stock, and sold it to J. Pierpont Morgan. In fact, I am sure that was after the election of the Northern Pacific.

Q. There was no connection between the cessation of hostilities—if we may use that word—on the part of Mr. Harriman against the Northern Pacific and his appointment or election to the directorate of that road subsequently, was there?

A. His appointment as director of the Northern Pacific road

grew out of the offer of Mr. Harriman and his associates to let 673
the appointment be made by the selection of Mr. Morgan for the board of directors of the Northern Pacific, and their promise to put their stock, or proxy representing their stock, in his hands to vote it at the succeeding annual election. Now, that was the cause, I think, for Mr. Morgan's putting him there; not because there was an agreement, because there was no agreement. Mr. Morgan might have taken eleven men or fifteen men off the street and nominated them.

Q. So that there was no connection between his placing the proxy in the hands of Mr. Morgan to vote his stock and his 674
appointment as a director upon the board of the Great Northern and the Northern Pacific?

A. Not the slightest. I testified already that my recollection is that Mr. Bacon said that Mr. Morgan should be entirely free to act, and that Mr. Harriman or Mr. Schiff, or Mr. anybody else's name should not be considered.

Q. And there was no connection whatever between Mr. Harriman's placing the proxy to vote his stock in the hands of J. Pierpont Morgan & Co. and Mr. Harriman's subsequent election to the board of the Chicago, Burlington and Quincy Railroad Company? 675

A. Not the slightest.

Q. Nor any connection between the placing of the proxy for his stock in the hands of J. Pierpont Morgan & Co. and his selection for the directorate of the Chicago, Burlington and Quincy Railway Company?

A. Not the slightest.

Q. His appointments and elections to all three of those roads came about without any agreement or understanding on the part of anybody that they should come. That is correct, is it?

A. That is correct, except that there was an agreement it 676
should be left to Mr. Morgan, and Mr. Morgan made the selection.

Q. I understand; but the actual selection had no connection whatever with any prior understanding or agreement?

A. No agreement or understanding of any kind.

Q. Mr. Hill, at and prior to May 9, 1901, did you know that the Chicago, Burlington and Quincy Railroad Company had, in

677 fact, projected extensive lines of railway; that is, that it had contemplated extending its lines into what was known or supposed to be Union Pacific territory?

A. I did not. I knew that the Chicago, Burlington and Quincy Company had made their surveys and was credited with making others; but I didn't know that it was contemplating the construction of lines into California or elsewhere.

Q. Was it generally supposed, or was it a matter of public knowledge prior to May 9, 1901, that the Burlington Railroad Company was then intending to extend its lines into some of
678 what is known as Union Pacific territory? I am not asking about the fact, but was that generally understood to be the case?

A. I had no understanding or knowledge, but I asked the questions of the president or chairman of the Burlington; I asked the question of Mr. Perkins, the chairman of the Burlington board, and Mr. Perkins told me they had made a number of surveys to know where they might go, but they had no work immediately contemplated. I knew also from some time before Mr. Perkins came to see me to know if I would join him in buying control of the Oregon and Navigation dur-
679 ing the time the Union Pacific was being reorganized and before they acquired it. I had some knowledge as to what was the plan of the Burlington property and people.

Q. Has the Burlington Railway Company which, so far as operating roads or extending lines is concerned, has succeeded the railroad company—has it at the present time under construction any of the lines that are supposed to be projected during the summer of 1901?

A. It hasn't any lines under construction that I know of. There was a short piece running southwest from Sheridan, and I believe that has been completed.

680 Q. Mr. Hill, has there since May 9, 1901, been, to your knowledge, any actual abandonment by the Chicago, Burlington and Quincy Railroad Company or the Chicago, Burlington and Quincy Railway Company of construction of extensions?

A. None whatever.

Q. And there are at the present time, so far as you know, no extensions contemplated?

A. None. It has some very heavy improvements contem-

681 plated, but no extensions.

Q. I am speaking about extensions of its railway?

A. Of new railroad?

Q. Yes.

A. No extensions contemplated that I know of.

Q. And is it true, Mr. Hill, that from May 9 down to the present time there has been no agreement or understanding of any kind between the Union Pacific and the Chicago, Burlington and Quincy Railway Company or the railroad company and the Northern Pacific and the Great Northern with reference to the policies of the respective roads touching one 682 another?

A. The construction of lines or competing lines?

Q. Yes; I will ask you that first with respect to constructing parallel or competing lines.

A. No such understanding.

Q. Or extensions?

A. There is an extension contemplated in the Snake River country which would be made jointly.

Q. By what roads?

A. By the Navigation Company and the Northern Pacific.

Q. And for the joint benefit of both roads? 683

A. Well, the situation is a peculiar one. There is a very deep gorge. One company owns one end of it and the other company the other, and there is a piece not completed in the middle, and it would benefit the situation and make it easier for everybody, for the railroads and the public, if the line was completed through. I think Mr. Mellen is here, and he can throw more light on that subject than I can, but I think—I have never seen the country—but I think it is a desirable thing to do for the benefit of the people, particularly those that live at the upper end of the valley.

Q. And for the joint benefit of both roads? 684

A. Well, it would be for the benefit of the country. It would save the people living at the upper end of the valley from going 100 or 150 miles out of the way.

Q. We will assume it is primarily for the benefit of the people, but was there some incidental benefit to be derived by the two roads?

A. It would certainly benefit both roads.

685 Q. I didn't know but that was a clear case of public benefaction.

A. Oh, no; the public will always benefit by a railroad.

Q. And vice versa, I suppose, Mr. Hill?

A. Yes, sir.

Q. Now, excepting that, Mr. Hill, there is no understanding and has been no understanding or agreement of any kind between the Union Pacific and the Chicago, Burlington & Quincy system and the Northern Pacific and the Great Northern?

A. That covers all.

686 Q. With reference to the construction of extensions and new lines, etc.?

A. No lines abandoned and no lines opened up.

Q. And there has been no agreement or understanding of any kind between those different roads with reference to the policies of the different roads to one another?

A. Territorial matter?

Q. Yes.

A. No, none in regard to territorial matters.

Q. Is there at the present time, and has there been since the summer of 1901, what you would call a better understand-
687 ing between these roads?

A. Since the visit of the Interstate Commerce Committee to the West I think there is an effort to maintain rates.

Q. You think that is entirely due to the visit of the Interstate Commerce Commission?

A. I wouldn't say that; it might be due to a fear that the law would be enforced against them. That applies mainly to points between the Missouri River and Chicago. My information is somewhat limited.

Q. If you will pardon me, I want to get through—let us go back. I am not speaking so much of the present time as I am
688 with reference to the deal of last summer. I want to know if, as a result of the conferences between the different roads and the negotiations that were had and the changes made in stock, and the placing of Mr. Harriman on the directorate of the different railway companies, I want to know if, as a result of that, there is any better understanding between the Union Pacific and the Burlington, the Northern Pacific and the Great Northern?

A. That was simply a matter of the stockholders, and Mr. 689
Morgan was selected by the Union Pacific interests. They said if the strain was relieved that they were satisfied to put their proxy in Mr. Morgan's hands. That was for the purpose of relieving the strained situation in the money markets, and that is all there was of it. Now, as to any agreement in regard to territory or operation, or the relation between the roads covering the business or their interests with the public, there wasn't anything of the kind, directly or indirectly.

Q. Let me call your attention to my question, and see if you will answer that directly. 690

Mr. Kellogg. I thought that was a pretty direct answer. Sometimes it happens that lawyers on different sides do not look at things in the same way.

Q. I want to know, Mr. Hill, if as a result of the conferences and negotiations and sales of stock that you have described during the summer and fall of 1901, and the placing of the proxy by Mr. Harriman in the hands of J. Pierpont Morgan & Co., about seventy-eight millions of the stock, which was a controlling interest in the stock of the Northern Pacific, and the placing of Mr. Harriman upon the board of directors of the Chicago, Burlington & Quincy Railway Company, 691
and of the railroad company, and upon the board of the Northern Pacific Railway Company, and also, later on, placing him as a director upon the Northern Securities Company, which now holds practically all the stock of the Northern Pacific Railway Company and a large part of the stock of the Great Northern Railway Company, has resulted in a better understanding between these roads as to the policies to be pursued?

A. Nothing whatever. The making of Mr. Harriman a director of these companies was considered by neither company, acted upon by neither company, but was solely a matter of 692
the shareholders. As far as Mr. Morgan was concerned, Mr. Morgan had a right under Mr. Harriman's proxy or agreement to select the directors for the Northern Pacific, and I think that there was much weight given by him in selecting Mr. Harriman, to the fact that he wanted to show Mr. Harriman that he was not taking any advantage of him, or was afraid of him, or suspected him.

693 Q. You have explained that to my entire satisfaction, but what I am trying to get at is, what has all of these various things that you have described, and this interchange of conferences between the Harriman faction and the Hill-Morgan faction resulted in? I want to know if it has resulted in a better understanding between the Union Pacific Railroad and the Great Northern and the Northern Pacific, and the Chicago, Burlington & Quincy Railway system, as the policies of those roads affect one another.

A. I don't know that there is any difference in the under-
694 standing or policy of the roads affecting each other today than there was last year or any previous year.

Q. So that these various things that have come along, these different developments with regard to the Harriman interests, his sale of the stock to J. Pierpont Morgan & Co., and his final exchange, which resulted in the exchange of that stock into the Northern Securities Company, and his appointment upon the Northern Pacific board, and his appointment on the board of the Chicago, Burlington & Quincy Railway Company and railroad companies. They have simply been acts of Mr. Morgan's to show his confidence in Mr. Harriman, and to show
695 him also that he is not afraid of him upon these boards?

A. I am not able to testify as to Mr. Morgan's object or reasons further than I have stated.

Q. I thought you had stated pretty fully, Mr. Hill, what he did it for. I understand you to give your explanation of why he did it.

A. I made my answer and it is there.

Q. I say, so far as you know, there were no other reasons than those you have given existed for these numerous acts on the part of J. Pierpont Morgan showing his confidence in Mr. Harriman?

696 A. I have answered that there was no agreement or understanding that there should be any particular change in the relations of the railroads. Now I recall attending two conferences at Mr. Harriman's request affecting the railroad situation in the Southwest, in Colorado, but I may say these are the only two conferences that I remember attending. They were to try and settle some differences between Mr. Gould and Mr. Harriman. The relations were very strained, and they

were paying rebates, or it was claimed they were paying re- 697
bates, to big shippers, and doing very irregular things, and Mr. Harriman asked me to come over and attend the meeting, and I attended two or three meetings with him on that ground.

Q. That was a matter in which you were not interested, either for the Northern Pacific or Great Northern?

A. No.

Q. You went in merely as a peacemaker?

A. The Burlington was interested to some extent.

Q. Oh, yes; then you went in as a party interested in the 698
Burlington?

A. I was not an officer in the Burlington and I said to them I was not, and couldn't bind the Burlington or act for it.

Q. But you were president of a company which owned half of the stock of the Burlington?

A. But if I could do them any good I would go and hear what they had to say, and I did.

Q. Mr. W. P. Clough, who is now vice-president and director of the Northern Securities Company, was formerly a director and vice-president of the Great Northern Railway Company?

A. He was for many years. 699

Q. And Darius Miller, who is now the general traffic manager?

A. No; he is vice-president of the Burlington.

Q. And has he charge of the traffic department?

A. Special charge of it.

Q. Special charge of the traffic department of the Burlington system?

A. Yes, sir.

Q. And what office did he have with the Great Northern?

A. He was, I think, second vice-president—the Great North- 700
ern was very sorry to lose him.

Q. Mr. Hill, I think I barely touched on this: Do you know whether or not, prior to the organization of the Northern Securities Company, J. Pierpont Morgan & Co. had contracted to sell all, or practically all of their stock or holdings in the Northern Pacific Railway Company?

A. They had sold a portion of it.

701 Q. To whom?

A. To me.

Q. How much?

A. Oh, I should say ten millions.

Q. And how much, at the time of the organization of the Northern Securities Company, did they then hold?

A. Oh, ten or eleven millions.

Q. And at that time were they, to your knowledge, under any contract or agreement to sell and dispose of that stock to anybody?

702 A. I don't know that there was any special contract, but they were, as I remember, willing to sell it to the Northern Securities Company.

Q. Was there any general understanding, if not a special, that they should turn it over to the securities company?

A. I think Mr. Morgan named a price that was higher than the price that was paid, and I told him that the securities company would not pay that price. It would pay one price to all. I think maybe Mr. Kennedy was with me at that conversation, and Mr. Morgan agreed to turn his stock in.

Q. At the price of $1.15?

703 A. Yes, sir.

Q. And was it the agreement between you and J. Pierpont Morgan & Co. that you would take about ten millions, or half of their holdings yourself, if they would turn in the balance at $1.15 to the Northern Securities Company?

A. No; my agreement had nothing to do with his turning into the Northern Securities Company directly. I wanted the shares and asked him if he would sell them.

Q. The ten millions?

A. Yes; I wanted them for other friends.

Q. And that had no other connection whatever with the
704 subsequent turning in by J. Pierpont Morgan & Co. of ten or twelve millions of their stock to the Northern Securities Company?

A. I am inclined to think that the price paid for the stock and the understanding that Mr. Morgan would turn the stock into the Northern Securities Company was before I bought the large block from him.

Q. What I am getting at is, you mean to say there was no

connection between your purchase absolutely of the ten mil- 705
lions and the turning in by J. Pierpont Morgan & Co. of the ten or twelve millions into the Northern Securities Company?

A. None whatever. That is what I have testified to.

Q. You bought these ten millions for yourself?

A. And others.

Q. And at what price, Mr. Hill?

Mr. Kellogg. I don't see how that is material.

A. I don't remember. I think the price was $1.15—that is what it was, I am sure.

Q. Had you purchased any stock of J. Pierpont Morgan & 706
Co. during the summer and fall of 1901, prior to the purchase of the ten millions?

A. Between the 1st of May and the purchase of ten millions?

Q. Yes.

A. No, sir; I had not.

Q. Had your associates?

A. Not that I know of. I don't think there is any change in his holding.

Q. I think your answer already covers it, but did you pur-
chase this ten million of J. Pierpont Morgan & Co. prior to 707
January 1, 1902?

A. Oh, yes, sir; I think it was in August or September.

Q. Mr. Hill, I think you already testified, at least in some of your explanations, that you had held a large amount of stock in the Northern Pacific since its reorganization—in March, 1896, wasn't it?

A. I don't remember, but it was reorganized in 1896. I think possibly before; I think myself and three others had about three millions invested in it before the actual reorganization; the old securities.

Q. And subsequent to the reorganization you purchased in 708
the neighborhood of twenty-six millions?

A. I think twenty-six or twenty-seven millions.

Q. And on whose behalf did you purchase that stock? On your own or on behalf of the Great Northern?

A. As individuals; the Great Northern had nothing to do with it.

709 Q. And did the Great Northern have anything to do with the financing of the deal?

A. Not a dollar.

Q. Did you pay $26,000,000 for that stock?

A. No, sir; we didn't.

Q. You and three of your associates carried that stock practically all the time?

A. No, sir.

Q. How long did you carry it?

A. We carried bonds until the company was reorganized,
710 and then we got stocks as security from the reorganization, and, I think about a year after the close of the reorganization, I bought from the reorganization committee—maybe less than a year—from the committee what stock it held of the company. That was bought and distributed at once between myself and seven or eight others, and I think I have given the names of those who were associated with me, and Jacob Schiff and Col. Oliver Paine will appear as associates in that transaction.

Q. In the spring of 1901, I think, you testified either here or before the Interstate Commerce Commission, that you held
711 about seven million and a half par value of the capital stock of the Northern Pacific?

A. That was my individual holding.

Q. And you were the largest individual holder of stock in that company?

A. I think I was.

Q. And that is a part of the stock which you got as you have just described?

A. Some; but some was acquired afterwards. Some of it was acquired subsequently.

Q. You sold and bought back other stock at different times?
712 A. Yes.

Q. I will revert to the Burlington matter for a question or two, Mr. Hill. At the time you commenced negotiations with the executive committee of the Burlington Railroad Company, or at any time during these negotiations with them, did they at any time represent to you that they controlled any particular portion of the stock of that road—that they owned or controlled it?

A. The executive committee? 713

Q. Yes, sir.

A. They didn't profess to act for any particular holding of stock; they were strongly of the impression, and so represented to me, that their shareholders would largely be governed by their recommendation, and subsequently that was the case.

Q. From the time you commenced negotiations in January, 1901, with the trustees or executive committee of the Burlington Railroad Company up to the time these negotiations were concluded, was the Burlington stock—that is, the railroad company's stock—being sold and dealt in in the open markets? 714

A. That was the case, and I recollect at the time there was quite a marked variation in the price up and down.

Q. And what was the highest price that you can now recall and for which the Burlington Railroad Company's stock was sold or purchased in the open market?

A. I couldn't recall. Probably one hundred seventy-five or eighty.

Q. Not exceeding one hundred eighty?

A. It might have been, but I don't recollect—something in 715 that neighborhood. However, I don't concern myself particularly with the market price of the stock.

Q. Isn't it a fact, after you commenced your negotiations with the executive committee of the Burlington Railroad Company, that there were large sales and purchases of the railroad company's stock in the open market at from one hundred fifty to one hundred sixty-five, varying along from time to time?

A. My understanding at the time was that there was somewhere between ten and fifteen millions of the Burlington stock that might be considered for sale in the market, but the great 716 bulk of the stock was held by investors and men who paid no attention to the market. I knew the market price of the Burlington stock and that seeking to buy it in the market would accomplish nothing.

Q. The directors of the Burlington Railroad Company and the members of the executive committee with which you were dealing, of course, owned some stock, didn't they?

717 A. I remember the chairman of the executive committee of the Burlington trustees, Mr. Hunniwell, said to me that his father, and I think he said himself and his father, were more interested, and had larger holdings of the Great Northern than they had of Burlington, although Mr. Hunniwell was the hardest man to agree with in the entire board.

Q. Well, Mr. Hill, I am afraid you are not answering my question.

A. I am trying to, sir.

Q. I will have to put it again. I want to know if at the
718 time you were dealing with the executive committee you had any knowledge or were given any information as to the holdings of the members of the board and of the executive committee; if you had any information given you as to the approximate amount of their holdings?

A. I think Mr. Perkins was the largest holder, and he held less than two millions; that he was the largest holder of Burlington stock on the list of stockholders.

Q. That is a partial answer, Mr. Hill.

A. That is as far as my knowledge goes.

Q. Then so far as the balance of them was concerned, I un-
719 derstand you to say that you had never known; that you had no information whatever or any knowledge as to even the approximate amount of their holdings.

A. None as to their holdings. They gave me information as to where the stock was held largely. I remember their saying that they had, I think, 1,500 shareholders who held less than 5 shares each. The stock was very widely distributed.

Q. Then at the time you started in with your negotiations with the executive committee, this stock was scattered all over this country, in the hands of some 18,000 or 19,000 stockholders?

720 A. Yes, sir.

Q. And at the time you commenced your negotiations with the executive committee you were given no information or any assurances by that committee as to any particular amount that could be immediately controlled?

A. That is a different question entirely.

Q. That is what I am getting at.

A. I was given to understand by the executive committee

that their recommendation would be accepted, at least they 721
felt that it would be very generally accepted by the stockholders of the Burlington and Quincy Railroad Company.

Q. Now, how was the price of the Burlington Railroad Company's stock in your deal, the Great Northern and Northern Pacific deal—how was that price fixed upon? Who suggested that?

A. The matter was the subject of negotiation on several occasions. The books or transcripts of the accounts were produced, showing its earnings—the income—I remember its income as shown was $10,400,000, including the sinking fund, 722
and that was over 10 per cent on the outstanding stock at that time, or about 10 per cent. The Burlington road had a very heavy sinking fund; for many years the miles of main track—something over 8,000—had a bonded debt, less the sinking fund, of about $15,800 a mile, and stock was about $13,000 a mile. Take the Burlington stock at 200 and add to it the bonded debt per mile of the road and it would give the average cost of the Burlington about $42,000 a mile, which was about what it cost us; that is $10,000 or $12,000 a mile less than any of these granger roads are selling at on the market. In other words, the Burlington was the cheapest property altogether, 723
and reached the points we desired to reach and it would cost us less money per mile than it would to have acquired any other.

Q. And you agreed on $200 per share as the actual value of the road?

A. Yes.

Q. Although that was 20 or 30 points higher than the market value?

A. Yes.

Q. Mr. Hill, did you know that as a result of your negotiations with the executive committee of the Burlington Rail- 724
road that a pool was formed to buy up the stock and that it did actually buy up a large amount of stock of the Burlington road which finally went into this deal?

A. I didn't know that, and I don't know it now. Never heard of it before and don't believe it is true. I know that the officers, Mr. Perkins and Mr. Harris, told me, not together, but separately; Mr. Perkins told me that he was a trustee and

725 that he would not buy a share. Mr. Harris, the president of the company, told me that Mr. Perkins had said to him: "Harris, ordinarily I am glad to see you getting as large interests as you can pay for in the Burlington, but at this time you are president of the company—don't speculate in its shares." Now, under these circumstances I don't think either of those men were concerned in any such pool. I think the information you have is wrong. I had no such information or knowledge.

Q. I am not asking you to argue the case; I am asking you for your information.

A. I will apologize for arguing it.

726 Q. There is no occasion for apology, but I am simply asking you so far as you know, no pool was formed?

A. I don't know of any pool, and I don't believe there was any.

Q. At the time of the consummation of that deal, the stockholders had an option to take joint bonds of the Great Northern and the Northern Pacific, and turn in their stock on the basis of one share of the Burlington stock for twice its face in these joint bonds?

A. Yes.

727 Q. Or they could take 20 per cent in cash and bonds for the balance, or they could take their cash?

A. I don't recollect the terms of the circular. It was a public matter, and I have not charged myself with the conditions. I suppose the circular could be found, and it would be much better.

Q. Wasn't it in the alternative in that way?

A. I think there was an alternative, but as to the proportions, I don't recollect.

Q. Who financed that deal?

A. Morgan & Co.

728 Q. J. Pierpont Morgan & Co., of New York?

A. Yes.

Q. They furnished whatever money was necessary, or might be necessary, to carry through that deal?

A. Well, there was an underwriting party, who furnished the money.

Q. Who was that: a large number?

A. Yes; I think they invited others, as is customary——

729 Q. Were you a party to that underwriting?

A. I think I was a party to it, and through me several others.

Q. Of your friends and associates?

A. Yes; I don't know that I held any of the underwriting for myself. I know some of it was offered to me, and I think I turned it over to a number of my friends.

Q. And was that underwriting executed to J. Pierpont Morgan & Co.?

A. Yes; they would issue the underwriting, similar to the underwriting circular of yesterday.

730 Mr. Kellogg. I don't think we wish to ask any questions now.

Mr. Grover. We ought to have the testimony written out if there is time, and if we want to examine, then we can examine.

Mr. Lancaster. That will be satisfactory.

731 The following is the testimony of W. P. Clough taken in the City of New York, as the same appears of record in the case of the United States vs. Northern Securities Co., Volume 1, pages 242 to 254; Volume 2, pages 653 to 661; Volume 3, pages 782 to 859, and at page 895. This was introduced by the complainant herein as original evidence in this cause, at the hearing in the City of New York, November 17th, 1902:

W. P. CLOUGH, after being first duly sworn, testified as follows in answer to questions by Mr. Lancaster:

732 Q. Mr. Clough, you are a resident of New York City at the present time—an actual resident?

A. My legal residence, I suppose, is yet in St. Paul, Minn.

Q. You are at present one of the directors of the Northern Securities Company?

A. Yes, sir.

Q. And you have been such director since the organization of that company?

A. From a time, I think, within a few days afterwards; not from the very beginning of the organization.

733 Q. You were, prior to the organization of the Northern Securities Company, also a director and vice-president of the Great Northern Railway Company?

A. For a number of years before the Northern Securities Company was organized I was a director of the Great Northern and also its vice-president, but at some date last fall, about the time of the organization of the Northern Securities Company, whether just before or just after I cannot remember now, because I do not try to carry it in my mind, I resigned all official connection of every kind with the Great Northern Railway Company and have not been connected with it in any
734 manner since that time.

Mr. Kellogg. Make the same objection and stipulation as to the other witnesses.

Mr. Lancaster. Yes, sir.

Q. You are a vice-president of the Northern Securities Company?

A. Yes, sir.

Q. And have been since shortly after the organization?

A. Since within a few days from the time of the organization I have been fourth vice-president. 735

Q. You are also a member of the executive committee of the Northern Securities Company?

A. Yes, sir.

Q. And as vice-president of the company are you in charge of the office of the Northern Securities Company here in New York?

A. In general charge. I don't think I am in general charge of the office in the sense of having power to decide upon its business affairs. 736

Q. Who is in charge of the offices of the company here in New York?

A. The board of directors and executive committee.

Q. You have been devoting most of your time, have you not, Colonel, since the organization of the Northern Securities Company, to the affairs of that company?

A. A very large part, yes, sir, of every day.

Q. What amount of stock, what number of shares of the Great Northern Railway Company, does the Northern Securities Company hold and own?

A. I do not remember the exact figures, because I do not try to carry those things in my mind. My recollection, subject to correction by examining the data, is that transfers of Great Northern stock to the Northern Securities Company have been completed to the extent of about 50,000 shares. 737

Q. Fifty thousand?

A. Of about 50,000 shares, yes, sir; where the transfers have been completed.

Q. And when were those transfers completed?

A. At various times, running through the months of November, December and January.

Q. What do you mean by transfers have been completed, Mr. Clough? 738

A. The by-laws of the Great Northern Railway Company provide that stock shall be transferred only in a given way, and that is upon the records of the Great Northern Railway Company.

Q. And you mean by that——

A. What I mean is, by the word "completed," that about

739 that number of shares had been transferred to the Northern Securities Company in a way that the Great Northern Railway Company by its by-laws recognizes as transfers, so as to vest the title of the property in the securities company.

Q. Well, now, there has been actually turned in and deposited with the Northern Securities Company a very large number of shares of stock of the Great Northern Railway Company, for which the stock of the Northern Securities Company has been issued in payment, has there not?

A. There are a certain number of other shares of stock, the
740 number of which I did not try to retain in my mind, which have been negotiated for—that is, of Great Northern stock which have been negotiated for—but the transfers of which to the Northern Securities Company have never been completed.

Q. And can you give us an approximate idea as to the amount or number of such shares?

A. I do not try to carry that in my mind.

Q. Well, you have a pretty correct idea, haven't you, Colonel?

A. Why, yes; I am reasonably familiar with the company's
741 business, and still, for many years, being accustomed to deal with numbers and figures very largely, I have omitted the effort to carry numbers in my mind.

Q. Well, do you know whether it is five hundred shares or a million shares?

A. Excuse me a moment. I would like to ask the examiner to read my answer as to the number of shares that had been transferred fully of the Great Northern.

The Examiner. Fifty thousand.

The Witness. I meant five hundred thousand. Fifty million I want to say; just change that.

742 Q. Colonel Clough, what I would like to get at would be as near a correct estimate as you could give of the number of shares which had been negotiated for by the Northern Securities Company, in which the transfers have not been completed.

A. Subject to correction, I should say it must be in the neighborhood of three or four hundred thousand shares.

Q. Of the Great Northern Railway Company?

A. Of the Great Northern Railway Company; yes, sir.

Q. Those shares of stock have been deposited with the 743
Northern Securities Company?

A. Yes, sir.

Q. And has the Northern Securities Company stock in payment therefor been delivered?

A. Yes, sir.

Q. To the parties turning them in?

A. Yes, sir.

Q. All that remains to be done then——

A. Either to the party or if they were presented by an agent to the agent of the party; either to or for the party. 744

Q. All that remains, then, is to have those certificates properly transferred upon the books of the Great Northern Railway Company?

A. All that remains for what do you mean?

Q. To completely vest, according to your idea to complete the deal and vest the title absolutely in the Northern Securities Company?

A. According to the by-laws of the Great Northern Railway Company there has been no transfer of those shares at all.

Q. I understand. We will not argue the legal proposition, but I am simply getting an explanation of what you mean 745
when you say there are 500,000 shares in which the transfers have been completed; in other words those transfers have been made according to the by-laws of the Great Northern upon the books of the Great Northern Railway Company?

A. That is what I said; yes, sir.

Q. Now there are about 300,000 shares——

A. Three or four hundred thousand——

Q. Three or four hundred thousand shares which have been turned into the Northern Securities Company, for which the Northern Securities Company has issued its own stock in pay- 746
ment and has transferred that stock to either the parties turning it in or to their agents?

A. Yes, sir.

Q. And I say the only thing now that remains in order to complete those transfers is to have the transfers properly made upon the books of the Great Northern Railway Company?

A. If those shares were transferred to the Northern Se-

curities Company upon the books of the Great Northern Railway Company, then the transfer of the shares of the Northern Securities Company would be completed, if that is what you mean.

Q. Now, Mr. Clough, the capital stock of the Great Northern is $125,000,000, I think?

A. Yes, sir; 1,250,000 shares, of which about 1,230,000 have been issued.

Q. Now, all that amount of stock the Northern Securities Company at the present time holds in completed transfers, and in transfers which are not completed, as you have explained, between 800,000 and 900,000 shares?

A. The Northern Securities Company has the relation to the Great Northern shares that I have mentioned in my testimony before; what those relations are is a matter part of computation and legal inference. I have stated the facts.

Q. I understand, but I am summarizing this matter, Colonel, and I want to know if that does not fairly summarize the statement that the Northern Securities Company now holds and owns all the stock of the Great Northern Railway Company, including the transfers completed and those incompleted, between 800,000 and 900,000 shares?

A. I have stated the facts, and I do not know that it belongs to me to draw any inferences whatever.

Mr. Kellogg. You can do that, too, Judge Lancaster.

Mr. Lancaster. That is a fair question, Mr. Kellogg. I am simply summarizing the statement.

Q. Has the Northern Securities Company made any request to the Great Northern to have these between three and four hundred thousand shares transferred upon its books?

A. Not that I am aware of.

Q. Are you making requests to have stock transferred from time to time?

A. I don't know that I can speak on that subject.

Q. The transfer books of the Great Northern Railway Company are here at the general offices of the Great Northern Railway Company, are they not?

A. Yes, sir.

Q. And the office of the Northern Securities Company is in the same building, is it not?

751

A. Yes, sir; temporarily.

Q. Well, at the present time?

A. Yes, sir; temporarily.

Q. How long, Colonel Clough, has it been since any stock which had been turned into the Northern Securities Company, stock of the Great Northern Company, how long has it been since any of that stock has been properly transferred on the books of the Great Northern Railway Company?

A. I don't know.

Q. Has any of it been transferred since the 1st of January, 1902?

752

A. I don't know.

Q. Do you have any recollection as to about the time when the last block or lot of stock was so transferred on the books?

A. I have never looked it up, so I could not answer it.

Q. I understand you mean by that that you don't know.

A. No, that is it; I don't know.

Q. Do you know of any reason why the Northern Securities Company cannot secure a proper transfer of these three or four hundred thousand shares upon the books of the Great Northern Railway Company at any time?

A. I don't know of any reason, if it should request the transfer, why the Great Northern should refuse to make it. 753

Q. Colonel Clough, can you state approximately the number of shares of the common stock of the Northern Pacific Railway Company which has been turned into the Northern Securities Company?

A. It is upward of one hundred and fifty millions, but the precise figures I do not try to carry in my mind.

Q. I asked you the number of shares and you mean one hundred and fifty millions, par value?

A. One hundred and fifty millions par value, which would be about 1,500,000 shares. 754

Q. Mr. Clough, you were a director and vice-president of the Great Northern Railway Company in the spring of 1901. Were you located in New York at that time?

A. Yes, sir, I have been here practically continuously since the middle of March a year ago.

Q. Did you take part in the negotiations which were conducted by Mr. Hill on behalf of the Great Northern, for the

755 joint purchase; that is, the purchase and joint account of the Great Northern and Northern Pacific, of the Burlington?

A. Yes, sir.

Q. You were familiar with all the details of that transaction?

A. Yes, sir; practically all of them. Of course there were negotiations that were conducted in places when I was not present, as for instance, in Boston, and I could not say that I was present at all negotiations, but I am familiar with all of the details of the negotiations, and myself, on behalf of the
756 Great Northern Company, signed nearly all of the papers in the negotiations as first vice-president.

Q. About what time, Colonel Clough, did you first learn of the attempt on the part of the Union Pacific interests, or Mr. Harriman, or Kuhn, Loeb & Co., to purchase a majority or controlling interest in the Northern Pacific Railway Company?

A. I first heard of it in the fore part of May. I think perhaps as early as the 5th, or 6th, or 7th of May, but I cannot undertake to give dates precisely. It might have been two or three days earlier or two or three days later.

757 Q. Were you present at any conference held between Mr. Hill and Mr. Schiff, or Mr. Harriman, and different members of J. P. Morgan & Co., immediately after May 9?

A. No, sir; I was not present at any conference at which Mr. Harriman or Mr. Schiff or any of those gentlemen were present.

Q. Did you know of your own knowledge of the negotiations or what took place leading up to the arrangement that was made to have the Union Pacific interests leave its proxies, or Mr. Harriman or Mr. Schiff leave their proxies with Mr. Morgan?

758 A. That was a matter directly between the stockholders of the Northern Pacific Railway Company, of which I was not one, and I had nothing whatever to do with it.

Q. And as a matter of fact, Colonel Clough, you not only did not take part in any of those conferences and were not present and in fact knew nothing of any such conferences or negotiations?

A. Except as a mere matter of hearsay. I had no personal 759
knowledge. It was entirely outside the line of my duties.

Q. Did you know of your own knowledge how it came about that Mr. Harriman was placed upon the directory of the Chicago, Burlington and Quincy Railway Company, and the Chicago, Burlington and Quincy Railroad Company, and of the Northern Pacific Railway Company, and later on directory of the Northern Securities Company?

A. Well, that is putting a great many questions on unrelated topics, disconnected topics, into one. If you will be kind enough to divide those four questions into one and put 760
them one at a time, I will do the best I can to answer them.

Q. I shall be glad to, or you can divide them yourself, Colonel.

A. I prefer to have you do it, Judge, as you are asking the question.

Q. That is all right. Do you know, Mr. Clough, how it came about that Mr. Harriman was placed upon the board of directors of the Northern Pacific Railway Company?

A. No, sir.

Q. Do you know how it came about that Mr. Schiff was placed on the board of directors of the Northern Pacific Rail- 761
way Company?

A. No, sir.

Q. Do you know how it came about that Mr. Harriman was placed upon the board of directors of the Chicago, Burlington and Quincy Railway Company?

A. In a way, I do.

Q. Well, will you state it?

A. Yes, sir. I can give you my understanding of why he was put there. The membership of the board of directors of that company was discussed several times by the parties in interest, and an endeavor was made to select men to occupy 762
that position whose knowledge of the railway business and whose place in the financial world would make their services on the board valuable to the Burlington Company and Burlington property, and my understanding was that Mr. Harriman was selected for the reason it was supposed that he was a suitable man under those conditions.

Q. Can you explain how it came about that Mortimer L.

763 Schiff was placed on the same board, along with Mr. Harriman?

A. Mr. Mortimer L. Schiff is a member of the firm of Kuhn, Loeb & Co., which is one of the largest financial houses in this country, and it had previously and since considerable dealings with the securities of the Burlington property, and it was considered that a representative from that house on the board of the Burlington would be of valuable assistance to it in its financial matters. That is my understanding.

Q. Did you understand that there was any arrangement, or
764 understanding, or agreement, shortly after May 9, 1901, by which Mr. Harriman, representing the Union Pacific interests, was to give a proxy to Mr. Morgan and to allow Mr. Morgan to name the directors of the Northern Pacific Railway Company, and also to place Mr. Harriman upon the board of the Northern Pacific Railway Company, and also upon the Chicago, Burlington and Quincy Railroad Company and Railway Company? Do you know of any such agreement or understanding between Mr. Hill, Mr. Morgan, Mr. Harriman, and Mr. Schiff, or any of those gentlemen?

A. I don't know of any such arrangement or understand-
765 ing, and I have never heard of any.

Mr. Kellogg. You mean as to all those parties you never heard of it?

The witness. That is the question he asked me. I am answering the question he asked me.

Q. Did you understand that there were any arrangements at the time, shortly after May 9 or about May 9, at the time Mr. Schiff and Mr. Harriman agreed to turn over their proxies to J. P. Morgan & Co., that either Mr. Harriman or Mr. Schiff should be placed upon the board of directors of the Northern Pacific Railway Company?

766 A. I heard, and I believe it to be a fact, that stockholders in the Northern Pacific Railway Company, some time in May, 1901, agreed to give their proxies to Mr. Morgan for the next annual meeting of the Northern Pacific Railway Company. I never heard of any arrangement that ran any further than that simple proposition.

Mr. Boutelle. Mr. Kellogg, in connection with Mr. Clough's examination, may it be stipulated that you gentlemen will furnish for us a copy of the by-laws of the Northern Securities Company?

Mr. Kellogg. Oh, yes.

Mr. Clough. I will either give you a printed copy of the by-laws or a copy of that pamphlet of the Interstate Commerce Commission, one of the two, but it will be correct.

(It was stipulated that the same was to be sent to the special examiner, to be marked "Complainant's Exhibit K.") 768

W. P. CLOUGH, being recalled in behalf of the complainant, testified as follows to questions by Mr. Boutelle:

Q. Mr. Clough, what is the number of directors of the board of the Northern Securities Company?

A. Fifteen.

Q. And are they re-elected, one-third every year?

A. Yes.

Q. That is, there are three classes, the third, second, and first, so to speak? 769

A. For the first board, and after that five go out each year and are replaced by five others.

Q. Can you give us, Mr. Clough, the names of the directors of the first board who would be in the third-year class?

A. I don't remember that ; I can get it, though.

Q. Will you furnish us a list of the directors by classes showing the third, second, and first year's class?

A. I will.

Q. And, Mr. Examiner, that may be attached or incorporated as Plaintiff's Exhibit M—that list to be furnished? 770

Mr. Kellogg. Yes.

New York, Thursday Afternoon, March 28, 1902.

W. P. CLOUGH, being recalled for further examination in behalf of the complainant, testified as follows in answer to questions by Mr. Lamb:

771 Q. Colonel Clough, I think you have already testified that you are the vice-president of the Northern Securities Company?

A. I am one of the vice-presidents; yes, sir. There are four.

Q. And you are familiar with its affairs, of course?

A. I think I am quite familiar with its affairs; still I don't try to carry all the details in my mind.

Q. You testified on your direct examination that the Northern Securities Company held a large block of stock of the
772 Great Northern Railway Company which had not been transferred of record on the books of the Great Northern Company.

A. Whatever I testified to in that respect the minutes of the special examiner will show.

Q. Do you remember your testimony?

A. I do in a general way.

Q. Well, do you remember testifying to that?

A. I remember that I testified to the fact that all purchases by the Northern Securities Company of about 500,000 shares of Great Northern stock had been completed, and that
773 negotiations were in progress for the acquisition of about 300,000 or 400,000 more which had not yet been completed.

Q. Well, you testified that that had not been transferred of record?

A. That is what I testified; yes, sir.

Q. When was the last dividend declared by the Great Northern Railway Company?

A. It was paid on the regular dividend day, which was at or about February 1 of this year. The Great Northern regular dividend days are February, May, August, and November.

Q. Did the Northern Securities Company receive that divi-
774 dend?

A. I am not called on to state that, am I?

Mr. Kellogg. It is objected to as incompetent, irrelevant, and immaterial—nothing to do with this controversy.

Q. Will you answer it?

A. No; I will not answer it. I decline to answer it.

Q. Was the dividend of this stock not transferred of record and paid to the Northern Securities Company?

Mr. Kellogg. That is objected to as incompetent, irrele- 775
vant, and immaterial.

Mr. Boutelle. That is the stock you have already referred to as not completed, Colonel?

A. That I decline to answer.

By Mr. Boutelle:

Q. Colonel Clough, it was testified to by Mr. Hill on his examination in this case, that, according to his understanding, the Northern Securities Company had given a proxy or proxies for voting its holdings in the Great Northern and 776
Northern Pacific, but Mr. Hill was unable to state who held that proxy or the parties composing it. Can you give us that information?

A. Yes, sir.

Q. Will you state that so the examiner can get it down?

A. Yes, sir. There have never been any meetings of stockholders of either the Northern Pacific or Great Northern companies since the acquisition by the Northern Securities Company of stock in either of those companies, but as a corporation can only act by proxy, and such a proxy was deemed necessary, or advisable at least, to come from the board of 777
directors of the Northern Securities Company, and as that is a large board and somewhat difficult to get a quorum together, the board has provided, temporarily, and until further action on its part, because the proxies are purely temporary, that at meetings of the stockholders of the Northern Pacific Railway Company its proxies shall be Charles Steele, George F. Baker, Jr., and A. B. Hepburn, of New York City, or whichever one or more of them shall happen to be present at the meeting. My memory is not so good as to the names of the proxies of Great Northern stock, but, subject to correction, it is that proxies for Great Northern stock are James 778
N. Hill, Edward Sawyer, and E. T. Nichols, which or whichever one or more of them should be present.

Q. Now, Colonel, can you give us approximately when that action was taken?

A. It was some time after the securities company had acquired the stocks of each of these two companies.

779 Q. Has there been more than one action or resolution adopted as respects these proxies?

A. There never has been but one set of proxies created so far in respect to either company, and the proxies that I have mentioned were those that were first created and have since stood. But they are all revocable, of course, at any time, like all other proxies, and can be changed whenever convenient.

Q. Colonel, can you state how much of the Northern Securities Company stock has been issued—the total amount, approximately?

780 A. Yes; it is about $350,000,000—in that neighborhood. It may be a little more or little less.

(From U. S. vs. No. Sec. Co., Vol. 2, pp. 653-661.)

Mr. Richards. I would like to have Colonel Clough sworn.

W. P. CLOUGH, called as a witness on behalf of the complainant, being duly sworn by the examiner, testified as follows:

781 Examined by Mr. Richards:

Q. Colonel Clough, what position do you hold in the Northern Securities Company?

A. Fourth vice-president, general counsel, a director, and a member of the executive committee.

Q. You have taken an active part in the management of the affairs of the company since its organization?

A. Yes, sir.

Q. In the answer of the Northern Securities Company it is stated that that company has purchased and had transferred to it five-twelfths of the capital stock of the Great Northern
782 Railway Company and has negotiated for four-twelfths of the capital stock of that company. I should like to have you explain what is meant by the term "negotiated for" and what is the present status of that stock.

A. The total authorized capital stock of the Great Northern Railway Company is 1,250,000 shares of $100 each, of which 1,238,804 shares are outstanding. I am giving this in a way so as to make it as comprehensive as possible. Of the

outstanding shares, the Northern Securities Company up to 783
this date has purchased and paid for and had transferred into its own name on the transfer books of the Great Northern Railway Company 528,672 shares. It has also purchased and paid for, but has not had transferred into its own name on the transfer books of the Great Northern Railway Company, 458,017 additional shares. These latter shares stand on the stock books of the Great Northern Railway Company in names other than that of the Northern Securities Company.

Q. Now, when you say that these shares that have been purchased, but not yet transferred, stand in the names of 784
persons other than Northern Securities Company, do you mean persons named and chosen by the Northern Securities Company?

A. Yes, sir.

Q. The Northern Securities Company, then, if I understand you, has substantially as complete ownership and as full control over the shares of stock not transferred as over the shares transferred?

A. I think I have stated the facts, and the other matter is one of mere inference.

Q. Those shares could not be voted except by the acquies- 785
cence or consent of the Northern Securities Company, could they?

A. They could be voted by the persons in whose names they stand. No other person except those in whose names the stock stands could vote them either in person or by proxy. It is likely that any request by the Northern Securities Company to these persons would be complied with in regard to the votes, if any, which they might cast upon this stock.

Q. These persons hold the stock, then, virtually as trustees for the Northern Securities Company?

786

A. Yes, sir.

Q. The complete equitable ownership is in the Northern Securities Company?

A. I presume that would be so. However, that is a question of law, in a sense, to be determined upon a consideration of the provisions of the charter and by-laws of the Great Northern Railway Company.

787 Q. At what time, Colonel, did the Northern Securities Company first have shares of stock in the Great Northern, which it had purchased and paid for, withheld from transfer and placed in the hands of individuals in this way?

A. I don't remember now the precise date of the first transaction of that character, but it was some time last winter or early in the spring, as the stock was offered for sale to the Northern Securities Company.

Q. Wasn't it, Colonel, some time early in the spring?

A. I don't remember the date now, but if desired I could
788 get the date of the first transaction of that character.

Q. I wish you would get the date of the first transaction.

A. I will do so and hand it to you or to the stenographer.

Note by the Examiner: The witness has accordingly advised the Examiner that the date of the first transaction above referred to is December 11, 1901.

Q. And also let us know how much stock of the Great Northern Railway Company had been transferred—purchased by and transferred to the Northern Securities Company at the time this first stock was not transferred, although purchased. Do you understand my question?

789 A. Yes, sir. My recollection is—subject to correction by looking at the books—that before the purchases of untransferred stock began the purchases of the transferred stock had substantially been completed.

Note by the Examiner: The witness has accordingly advised the Examiner that the number of shares above referred to is 490,833 shares.

Q. Do you know how the change of policy in the handling of the shares of the Great Northern Railway Company came about?

A. In the acquisition of stock not transferred to the North-
790 ern Securities Company, that company followed the usage almost, probably quite, universal among large financial institutions and dealers in securities in this city, elsewhere and throughout the country, of carrying in names other than its own considerable proportions of its holdings of securities, in order to facilitate the handling of its business and its financial transactions.

Q. And did the necessity of doing that——

791

A. The desirability.

Q. The desirability of doing it—was that first called to your attention only after you had had transferred five-twelfths of the stock of the Great Northern?

A. We had previously been carrying considerable quantities of Northern Pacific shares in the same way, and it was thought desirable to carry a certain proportion—or some proportion, I will say, instead of a certain proportion—some proportion of Great Northern shares in the same manner.

Q. How much Northern Pacific shares had you been carrying in that way?

792

A. From a rough recollection thirty-odd million, and at times I think considerably more.

Q. Has that all been transferred to the Northern Securities now?

A. No, sir; large amounts are still being carried in the names of others.

Q. Can you state what the entire amount is of Northern Pacific that is carried in that way now?

A. As I say, my recollection is that it is more than thirty millions of dollars; that is my recollection.

Q. And how much Northern Pacific has been transferred? 793

A. My recollection is that it has practically all been transferred now except about twenty millions.

Q. Whether the stock has been transferred or not, the certificates are in the possession of the Northern Securities Company?

A. Yes, sir; the certificates are in our possession—in the possession of the Northern Securities Company.

Q. Were all these certificates paid for by the transfer of stock of the Northern Securities Company?

A. No, sir.

794

Q. What certificates were not?

A. On the 18th day of November, 1901, the Northern Securities Company purchased $37,023,000 of the common stock and $41,085,000 of the preferred stock of the Northern Pacific Railway Company, making a total of $78,108,000 of the stock of the Northern Pacific Railway Company, in one lot, for which it paid the lump sum of $91,407,500. Of this price the Northern Securities Company paid $8,915,629 in cash and $82,491,-

795 871 in its own stock at par. That is one transaction. On the 27th day of December, 1901, the Northern Securities Company purchased from the Northern Pacific Railway Company the convertible bonds, so-called, of the latter company to the amount of $34,709,062.50, for which it paid cash. Within two or three days afterwards, about the 1st of January, 1902, it caused those bonds to be converted into the new common stock of the Northern Pacific Railway Company, which it has since held. It has also from time to time since purchased small lots of Northern Pacific, for which it has paid cash.

796 Mr. Grover. Why not state the total amount of those?

Witness. I don't remember. I did not get those figures. They are comparatively small lots that came in from time to time and we paid cash for them. They are not large in the aggregate, but they were small holdings that came in and we bought them and paid cash for them.

Q. From whom did you purchase this large block of common and preferred stock—thirty-seven millions of common and forty-one odd millions of preferred?

A. That is the block of stock referred to in the testimony of Mr. Steele and Mr. Perkins as having been purchased from

797 E. H. Harriman and Winslow S. Pierce, trustees, and afterwards turned over to the Northern Securities Company.

Q. Who carried on the negotiations for the purchase of that stock from Harriman and Pierce?

A. J. P. Morgan & Co., or some members of that firm. I don't know of my own knowledge which one of them. It appears from the evidence of Mr. Perkins and Mr. Steele that they were the members that conducted the negotiation; that is the source of my information.

Q. Do you know how the price paid for this large block of stock was reached; upon what basis the computation, if any?

798 A. I have not the slightest idea and have never been able to form one.

Q. The stock was purchased by J. P. Morgan & Co., and then turned over to you and you carried out the terms?

A. Yes, sir.

Q. The purchase as arrived at between J. P. Morgan & Co. and Harriman and Pierce was transferred to the Northern Securities Company, and the Northern Securities Company

carried out the sale by direct dealing with Harriman and 799
Pierce on the 18th day of November of last year.

Q. It issued to Harriman and Pierce some eighty-two millions of its own common stock?

A. Yes, sir.

Q. And paid them over $8,000,000 in cash?

A. $8,915,629 in cash.

Q. Does the stock of the Northern Securities Company thus issued to Harriman and Pierce still stand in their names?

A. It stands in their names on the books of the securities company. That is the extent of my knowledge about its pres- 800
ent ownership.

Q. In what way did you pay the money portion of the consideration?

A. The securities company borrowed the funds to make the cash part of the payment on collaterals which it owned and paid Harriman and Pierce from the proceeds of that loan.

Mr. Grover. By check.

Q. From whom did it borrow the money and on what did it give the check?

A. The money was borrowed from J. P. Morgan & Co.

Q. You gave a check? 801

A. We gave a check on J. P. Morgan & Co. My recollection is that the check ran against them.

Q. For that amount?

A. Yes, sir.

Q. Now, as the purchaser of thirty-seven millions of common and of forty-one-odd millions of preferred stock of the Northern Pacific, the Northern Securities Company became entitled to do certain things. It became entitled, in the first place, did it not, to subscribe for convertible bonds?

A. If you will just let me explain that in my own way.

Mr. Richards. Just strike out my question, Mr. Reporter, 802
and let Colonel Clough go on and complete his statement.

Witness. By the terms of the resolutions of the Northern Pacific Railway Company retiring the preferred stock of that company it was provided that the holders of the then existing common stock of that company of record at a certain future day, which I think now was the 10th of December, 1901, would

803 be entitled to subscribe at par for convertible bonds that were to be issued by the Northern Pacific Railway Company in the process of retiring the preferred stock to the amount of 75/80 of their holdings in the existing common stock. All stock that was transferred on the record of the Northern Pacific Railway Company prior to the date of the closing of the books, which, as I have stated before, as I remember, was on December 10, would carry with it this right of subscription, so that when the Northern Securities Company purchased the Harriman and Pierce stock, common stock, or any other
804 common stock of the Northern Pacific, prior to December 10, with their purchase they got the right of subscription which the resolutions which I have mentioned gave. Now, does that explain it fully?

Q. Yes, that explains that portion of it. Now, as a matter of computation, 75/80 of 37,000,000 is about 34,000,000, isn't it?

A. Yes, sir; it is about 34,000,000. And I think that the subscription right which the Northern Securities Company exercised was obtained by it almost wholly from its purchase of the thirty-seven and odd millions of the Harriman and
805 Pierce stock. Is that what you want to get at?

Q. That is it.

A. I haven't made the computation. I can make it in a minute, you know.

Q. Now, you have explained the right you acquired by the purchase of the common stock, but you have not explained the right you acquired by the purchase of the preferred stock of forty-one millions. What right did you acquire by that?

A. The right on the 1st day of January, 1902, to have that stock redeemed by the Northern Pacific Railway Company at par in cash.

806 Q. And was it redeemed at par at that time?

A. It was on the 1st day of January, 1902, all presented to the Northern Pacific Railway Company for retirement and was redeemed at par. The Northern Securities Company received from the Northern Pacific Railway Company on the 1st day of January, 1902, an amount in cash equal to the par of the preferred stock which it turned in.

Q. That amount substantially reimbursed you for those ex- 807
penditures of cash, didn't it—within one or two million dollars?

A. That is a matter of computation easily made.

Q. Well, it is a fact that the loans you made of J. P. Morgan & Co. at that time to carry out this transaction were wiped out?

A. No, sir. No, sir; the loans we made from J. P. Morgan & Co. covered some other matters besides.

Q. Some others?

A. Yes, sir; they have since been paid. 808

Q. They have since been paid?

A. They have since been paid; yes, sir.

Q. Colonel, I don't think I asked you, and I suppose I ought to ask you, who received the dividends on the untransferred stock of the Great Northern Railway Company?

A. All dividends on the untransferred stock which I have mentioned in my previous testimony, accrued and paid after the purchase of the stock by the Northern Securities Company, went into the treasury of the Northern Securities Company either directly or indirectly.

Q. That also applies to Northern Pacific? 809

A. Also applies to Northern Pacific; yes, sir.

Q. Has there been any election of directors of either the Great Northern or Northern Pacific Companies since the Northern Securities Company purchased the stock?

A. No, sir.

Q. What provision has been made for voting the stock of these two railway companies held and owned by the Northern Securities Company?

A. Nothing except the appointment of proxies, which I stated in my testimony that is already in evidence here.

Q. What is the end of the fiscal year of the Northern Se- 810
curities Company, according to your regulations?

A. None has yet been adopted, nor has that subject been discussed to any great extent. It has been suggested that the business and calendar year should be made to conform. But neither the board nor the executive committees has ever had the subject before it.

811 Q. No annual report of the securities company has yet been prepared?

A. No, sir; but all of its records are at the service of the Government any time they want to inspect them.

Q. When do you have the next annual meeting of the Northern Securities Company?

A. In November?

Q. November 13?

A. I think it is the 10th.

Mr. Richards. That is all I care to ask the Colonel.

812

St. Paul, Minn., Oct. 23, 1902.

(From U. S. vs. No. Sec. Co. Vol. 3, pp. 782-859.)

W. P. CLOUGH, recalled as a witness on behalf of the defendants testified as follows:

Examined by Mr. Grover:

813 Q. What official connection did you have with the Great Northern Railway Company?

A. I was the first vice-president from the time the name was changed from the Minneapolis & St. Cloud Railroad Company to the Great Northern, sometime in the latter part of the year 1889, until a little more than a year ago, when I resigned all of my official connection with the Great Northern Company, about a year ago.

Q. Previous to your becoming vice-president of the Great Northern, what official connection did you have with the St. Paul, Minneapolis & Manitoba Company?

814 A. From 1887 on until some time last fall I was second vice-president of the St. Paul, Minneapolis & Manitoba.

Q. You may state in this connection your official relation to the Northern Securities Company.

A. I am a director, a member of the executive committee, fourth vice-president and general counsel.

Q. And your official relation to the Northern Pacific?

A. Since December 11, 1901, I have been a director and a 815
member of the executive committee of the Northern Pacific Railway Company.

Q. What official relation have you at the present time with the Great Northern Railway Company?

A. None whatever.

Q. That relation ceased about a year ago?

A. About a year ago.

Q. During your relation with the Great Northern Railway Company, was the subject of organizing what we call a holding company, or making use of one, mentioned in your pres- 816
ence and mine and discussed by Mr. Hill, Mr. Kennedy, Mr. James and other Great Northern shareholders?

A. Yes, sir, those suggestions and discussions, to a certain extent, began years ago. I couldn't in my memory now fix the precise date when that began, but certainly as long back as five years ago. Mr. Kennedy, particularly, who was getting along in years himself, began the suggestions, I think; I think they came from him perhaps originally,—that certain of the shareholders of the Great Northern Company who had originally gone into the properties in the '70's, and all of whom were getting old, should make an arrangement to put their 817
shares in these properties (the Manitoba and Great Northern properties—it had gone from Manitoba shares into Great Northern shares) into a company for which they should receive the stock of that company.

Q. State the purpose or declared object of organizing or making use of such company.

A. The gentlemen who were to be considered in that connection, and whose co-operation was desired and intended were about eight or ten men who had originally gone into the St. Paul & Pacific Securities, along about 1875, '6 and '7, 818
when the lines were in a state of bankruptcy. They had retained their interests in the property and increased them (their investments) as time had gone by, with the result that they had made very large gains; and the securities they held and had acquired from time to time up to within two or three years ago amounted to very large sums; and it was the desire of those gentlemen, in the event of any of them passing away (and it was believed that all of them would pass away in a

819 comparatively short period of time), that as they had co-operated together and acted in view of the mutual and common interest in the past, that their stock should be put in a position so that the stock of those parties in the future would stand about in the same or similar relation to each other that they had in the past; that the value of the securities should be preserved, as far as possible, by a continuation of the policy of building up the property of the company, and in event of a sale of the holdings of any of them that those of the rest of them should be treated in the same way and be sub-
820 ject to the same conditions. That was the general idea.

Q. Was the matter mentioned or discussed during the early winter of 1891?

A. Of 1891?

Q. 1901?

A. 1901, yes, sir. I went to New York, arrived there on the 15th day of March (either the 15th or 16th), 1901, and have remained there practically all the time since. Mr. Kennedy was about to take a trip to Europe, and he again revived the suggestion in regard to the formation of what he called a holding company, to take the Great Northern shares of him-
821 self and his old associates that I have mentioned.

Q. You mean Mr. John S. Kennedy?

A. Mr. John S. Kennedy, yes, sir; the gentleman who has testified before in this case. And he suggested, as time was advancing with himself and his old associates, that the matter should not be long delayed. He went away very soon, and as time permitted the subject was taken up, from time to time, and working upon the proposition was continuous until the formation of the company, the final filing of its articles in November following—November, 1901.

822 Q. Did you take part in the drawing of the articles?

A. Yes, sir.

Q. Take charge of the matter?

A. Mr. Kennedy, I think, talked to me on the subject quite as much as Mr. Hill did. Very soon after Mr. Kennedy went away the question was more closely considered, and it was thought desirable, if a company of that kind were formed, that it should have the stability that a charter beyond the power of legislative amendment would give, and such a char-

ter should be acquired for it if possible. It was known that 823
the territory of Minnesota, before the admission of the territory into the Union, had granted a great many charters for financial and other companies, and it was thought possible that some of those old charters could yet be found on foot that would contain the powers that would be considered necessary for the purpose, and that would at the same time be legislative contracts with the state of Minnesota so that they would be beyond the power of amendment. An examination into that subject was set on foot, and Mr. Grover, who was on the ground here, was entrusted with the subject of looking
that matter up. That occupied, necessarily, quite a consider- 824
able time, and I believe we didn't get the report of Mr. Grover (I am stating from recollection now) until some time in May. By that time Mr. D. Willis James, another of the gentlemen whom I have spoken of as being one of the early investors in these properties, had returned from California, and renewed suggestions of a character similar to those he had made before. Mr. Samuel Thorne came back about that time. He was another of them and he concurred in that view. Lord Mount Stephen and Lord Strathcona, who were two others,
had directly and indirectly sent communications from Eng- 825
land of a similar character. So that it was regarded as settled that as soon as the matter conveniently could be reached the holding company should be formed. The result of the inquiries into the territorial charters in Minnesota was, as I remember now, that nothing of a nature deemed entirely satisfactory could be found; and the idea of getting hold of an old special charter was dropped. The question then came of the formation of such a company under the general incorporation acts of some state that contained legislation permitting such corporations to be formed, and that was a matter of discus-
sion for a considerable period. There were several states sug- 826
gested as having appropriate legislation on that subject, and among them I remember were West Virginia, New Jersey and New York. That inquiry necessarily occupied considerable time, especially in view of the fact that I was very busy in connection with the carrying through of the purchase of the Burlington stock; I had been from March. The negotiations for the purchase of that stock began almost immediately after

827 I arrived in New York, in March, and the completion of those negotiations, the making of the contracts for the purchase of the stock, the preparation of the mortgage and the bonds and the signing of the bonds, and the other necessary labor was very great from March, all the way through until along in September, when the bonds had been signed and the completion of the purchase of the stock had been made. But as time could be gotten the questions that came up in connection with this company were given attention; and I remember that before the subject of the selection of a particular state was decided—long before that—

828 Mr. Beck. What particular state did you say?

Witness. The selection of the particular state.

Mr. Beck. I just wanted to see if I understood.

Witness. The selection of the state, yes, under which the company should be incorporated. Long before that was determined, at the suggestion of Mr. Kennedy, I had sketched out the substance of a statement of the powers of a corporation such as was contemplated. Another hindrance was the fact that the parties who were to be interested in this new corporation were very much scattered. Mr. Kennedy, who

829 was the most active of all except Mr. Hill, and quite as active as Mr. Hill, was not in very robust health. He went to Europe, I think, about the first of April, somewhere along there, and did not return until June. About the time he got back to New York the weather became very hot, which affected his health considerably, so that he left almost immediately for Bar Harbor, and consultation with him was very difficult. But this draft was made, as I remember (the first draft), after his return; I am quite sure it was after his return in June from Europe and before his departure from Bar Harbor, some little time after that. It was not determined at this time

830 either the state under which the incorporation should be made or the amount of the capital stock.

Mr. Beck. Would you mind, Col., telling what year you are speaking of now?

Witness. Last year, 1901. I thought I had made that clear. Beginning at March, and lasting through that year. As Mr. Kennedy and Mr. Thorne and Mr. James (they were the gentlemen who were principally consulted) could be seen,

the matters of the state where the incorporation should be 831
made and the amount of the capital stock were discussed, and
also (in a general way) the powers. The sketch of the articles
of incorporation that I have mentioned left blank the name of
the incorporation, the state under whose laws it was to be in-
corporated, and the capital stock. After discussion over the
subject of powers with Mr. Kennedy, at various times, and
with Mr. James as there was opportunity to see them, changes
were made in that draft. I think between June and October
there were probably two or three different sketches made,
and the matter of capital stock and of the state where the in-
corporation should be and its name were not finally decided 832
until these various gentlemen had gotten back from their
summer places and there had been an opportunity to have a
more extended consultation with them. But some time along
in the month of October, as I remember it, most of the mat-
ters had been decided except the state where the incorpora-
tion should be made. That was about the last thing to be
decided. In the preoccupations of all of us we did not reach
that until along in November. As soon as parties could be
consulted who were immediately interested, the state of New
Jersey was decided upon, and steps were immediately taken 833
for the incorporation of the company, which followed by the
filing of the articles on the 13th of November.

Q. State, as near as you have in mind, the number of share-
holders of the Northern Securities Company.

A. At this time?

Q. At this time, and when this petition was filed in this
proceeding.

A. When this petition was filed there were about 1,300
shareholders; there are now about 1,800,—of the Northern
Securities Company.

Q. You refer to the shareholders who have registered their 834
stock and appear on the records?

A. Yes, that is what I have reference to. The only knowl-
edge the officers of the company have is the stock transfer
books, and there appear on the stock transfer books now
about 1,800 names. When this suit was begun, there ap-
peared about 1,300 names.

835 Q. Had you knowledge of the fact of transfers of the Great Northern and Northern Pacific to the Northern Securities Company?

A. Yes, sir, I knew about that; it was all done under my supervision.

Q. You had general charge of the New York office of the Northern Securities Company?

A. As far as it is entrusted to the officials; the business affairs of the Northern Securities Company are, under its charter and by-laws, controlled by its board of directors and its
836 executive committee.

Q. You were in the office and had charge of the office?

A. Yes, sir.

Q. Now, state whether the transfers were individual, absolute, without reservation, and without solicitation from the Northern Securities Company—fully?

A. To answer the first question, every purchase of stock that has been made by the Northern Securities Company (whatever stock it may be) has been by direct individual transactions and negotiations with the owner of that stock except in the one instance that I have referred to in my previous tes-
837 timony of the purchase of the Harriman and Pierce stock, where J. P. Morgan and Company negotiated the purchase and the purchase was assigned to the Northern Securities Company.

Q. Now, were the transfers absolute?

A. They were absolute and unconditional in every case.

Q. Were they solicited by the Northern Securities Company?

A. No, sir; in no case. The Northern Securities Company, some time in November, I have forgotten the precise date, I think it was the 22nd, issued a circular to each individual
838 stockholder of the Great Northern Railway Company, of which a copy has been introduced.

Q. Were you present in the office of the Northern Securities Company at the times when holders of shares came there to make transfers or to make inquiries?

A. Yes, sir; I was there constantly in attendance at all times during practically every business day from the time of

the organization of the Company until, I might say, last 839
Friday. I believe I was absent during the summer occasionally Saturdays, but practically every business day since its organization until last Friday, when I left for St. Paul, I was in the office during the business day and practically all the business hours.

Q. Now, were a considerable number of transfers made there by parties appearing personally or by their representatives?

A. Yes, sir, quite a good many people brought their stock in personally; many others sent it by mail. 840

Q. What information or suggestions were made to them respecting the transfers?

A. Why, there was nothing special; the transaction would be that the individual would present his Great Northern stock, or Northern Pacific stock, as it might be, and ask to sell it to the Company and to receive in pay the stock of the Company. When litigation against the Company was threatened I think in every instance that fact was communicated to every person bringing his Great Northern and Northern Pacific stock to the Securities Company to sell it. And after a little time, after litigation had been begun by the state 841
of Minnesota in the Supreme Court of the United States (that was, if I remember right, early in the present year, about the first of January, 1902), the Company had a rubber stamp made, of which I haven't a copy of the impression here (I forgot to bring it), but it was to the effect that the person who offered his stock to the Securities Company for sale had been informed by the officers of the Company of the pendency of the litigation, and that was stamped upon each application. In order to keep our records straight, we had a blank form of offers to the Company, and that was stamped upon the appli- 842
cation.

Q. What considerations led to the fixing of the capital of the Northern Securities Company at $400,000,000?

A. In the early part of the active consideration of the formation of this company it was expected that the holding Company would acquire the shares of eight or nine of the old investors, as I call them, amounting, in the aggregate, to a little over $30,000,000, perhaps 31 or 32 millions of dollars;

843 and, at tLat time, when the question of capital stock was suggested, it was suggested at a comparatively small figure, but after the so-called raid of the Union Pacific interests on Northern Pacific stock, which culminated some time along about the 8th or 9th of May or a little after that, it was expected to take into the company the interests—the Northern Pacific interests—or the holdings, rather, of Northern Pacific stock of those parties and of a few other gentlemen who were friendly with them. The Northern Pacific holdings amounted to a little over $40,000,000 of the common stock.
844 So that along up until the end of July the stock suggested (the capital stock of the Northern Securities Company) was about 150 to 200 millions of dollars. I might mention in this connection that it was also expected, very soon after the matter commenced to take form last season in New York,—it was also expected that the Securities Company would acquire the stock of other companies, industrial concerns in the country where the railroads operated, that were of the character that the railroad companies themselves could not well hold, such as coal mines and iron mines and properties of that character; and there was always intended to be left a very considerable
845 margin above what was needed for the railroad stocks to take care of these outside stocks. And the discussion and suggestions of the amount of the capital stock, along in June or July or up to early July, rather, were around from 150 to 225 millions of dollars, one gentleman suggesting one thing and another, another; and it ran along that way until I think after Mr. Morgan got back from Europe. If I remember rightly he got back about the Fourth of July, and some time after he got back he was, I believe, asked whether he would sell his Northern Pacific stock to a company of that character. I think he had five or six—or his firm owned or had in their
846 possession five or six millions of the Northern Pacific capital stock. Some time after his return, he expressed his willingness to sell his stock to a company of that character, but upon the condition that all other holders of Northern Pacific stock (common stock) should have like privileges with him, if they desired to exercise them. I might say at this time it was known, became generally known, that a plan for the retire-

ment of the Northern Pacific preferred stock and its replace- 847
ment by new common stock, that had been conceived early in the year, would be quite surely carried out on the following January; and, when it was carried out, there would be 155 millions of stock of one class of the Northern Pacific, and Mr. Morgan was very strenuous that when this stock was all out, if he sold his stock to the Northern Securities Company, that each of the other holders of the common stock, if he wanted to do so, should have the privilege of selling to the Northern Securities, at the same rate. He was extremely insistent on that. Some of the eight or nine or ten Great Northern 848
stockholders who were consulted in this matter had quite early taken a similar view in regard to Great Northern stock. They suggested that it had been the settled policy of the Great Northern management that whatever benefits of any kind should be open to the holder of any of the Great Northern stocks should be opened upon equal terms to all the others. There was not very much progress made with that proposition until after Mr. Morgan's return, and his insistence upon that privilege (a similar privilege for the Northern Pacific stockholders in relation to their stock) and then it was very generally considered by these gentlemen that the ar- 849
rangements for the holding company, as it was commonly called at that time, should be made large enough so as to let in, if desired, all of the holders of the Great Northern stock as well as of the Northern Pacific. That matter was discussed from time to time, and it was believed by myself and Mr. Hill and Mr. Kennedy and some of the others who had watched things very closely, that there was very little probability of anything nearly like the whole of the stockholders, of the Great Northern at least, coming in, because that was a well established stock in the market. It had been on
the market for ten years and had a high market value and 850
was thoroughly well known. It was held entirely by investors. There never has been any speculative movement in Great Northern stock, and it was thought, that being held that way, the holders of a well-known and well-established stock would be loath to sell it and take in pay the stock of a new and comparatively unknown company. But finally it was said, and that was the argument which prevailed in fix-

851 ing the amount at what it was,—it was finally suggested by somebody and strenuously insisted (I think it came from Mr. Morgan perhaps first) that if the capital stock of the Northern Securities Company were fixed at any sum very largely below what would be required to purchase the capital stock of the Northern Pacific and Great Northern companies, it would have an appearance upon its face as of an intention on the part of the gentlemen promoting this company to exclude some of the other stockholders from the benefits, whatever they might be, in the new organization. The amount that
852 would be required to purchase the two stocks was computed, in a rough way, and it came to something in the neighborhood of 400,000,000 of dollars. It was also desired, as I said before, that the new company should have reserved to it a considerable amount of stock available for the acquisition of other properties, some of which it has since acquired, and 400 millions was fixed as a round number covering all of those different ideas. That was the way the 400 millions came to be fixed. It was very largely a matter of appearance in the minds of some of the few gentlemen who expected to sell their stock to it.

853 Q. Is there any agreement or understanding, on the part of the Northern Securities Company, that in any way restrains its right to sell or dispose of the stock it has purchased or make such disposition of it as it may?

A. None, whatever. The holdings of the Northern Securities, of all of its securities, railroad and other, are absolute and unconditional and free from any restrictions of any kind, either expressed or implied.

Q. During your connection with the Manitoba Company and the Great Northern, did you give attention to the matter of traffic, the making of rates?

854 A. Very much, from the time I went on the Manitoba Company until I ceased my connection with the Great Northern, and, in fact, ever since,—very especial attention.

Q. You know the location of the lines of the Great Northern and Northern Pacific?

A. Yes, sir, I know them.

Q. The Burlington and other lines in the Northwest and west of the Mississippi and Missouri rivers?

855

A. Yes, sir.

Q. (Map shown witness.) This is a map showing railway lines,—Northwestern, Great Northern, Northern Pacific, Burlington, Canadian Pacific, Chicago, Milwaukee & St. Paul, Soo Line, Chicago & Northwestern, Union Pacific, Oregon Railway & Navigation Company, Oregon Short Line, Minneapolis & St. Louis, Great Falls & Canada Railway. The lines of the different railways named are shown on the map as represented by the colors in the index.

A. I may say I have carefully examined this map before seeing it now, and the different railway systems are laid down on the map with approximate correctness, so far as could be done upon maps of that scale. 856

Q. And the lines are represented in the colors as shown in the index?

A. Yes, sir.

Q. The scale is 40 miles to one inch?

A. Yes, sir. That very small scale makes it impossible to use the precision in laying the lines down that could be used on a map of larger scale.

Q. The map also shows the population of the towns under which the figures are entered? 857

A. They are intended to be as shown by the census of the year 1900. Those were the instructions for putting it down. I haven't looked this over.

Mr. Grover. I propose to put upon the map figures taken from the census of 1890 and 1900 showing the population of some of the states, also showing the wealth of the states in 1890 and in 1900. I didn't have them accurately. We ask leave to insert those on the map, and I offer the map in evidence subject to that reservation.

The map was marked for identification defendants' Exhibit 4. 858

Q. At what points or stations in the state of North Dakota do the lines of the Great Northern and the Northern Pacific meet or form junctions?

A. If you will let me look at this map to give you the proper order and read them off.

Q. And in this connection you may answer as to Montana and Washington.

859 A. (Referring to map.) As I understood you, North Dakota, Montana and Washington?

Q. Yes, sir.

A. In North Dakota: Wahpeton, Fargo, Grand Forks, Casselton. That is a mere—

Q. I will ask you later about the business.

A. Leeds.

Q. And Grafton?

A. Yes, sir. I was coming to that, and will suggest here that the name ought to be put down; I see that the draftsman
860 has omitted it. I will mark it with a pencil so we will be sure to remember it.

Q. You may state about the population, and the business and development of the stations at the points named.

A. They are all small, comparatively new towns, having only an agricultural interest; no particular development of any other industries. Wahpeton, by the census of 1900, had 2,228 people; Fargo, by that census, had 9,589 people; Grand Forks, 7,652; Grafton is not here, it will be put on; it is a small farming village.

Q. Grafton and Leeds?

861 A. Leeds is a mere junction point, connection; there is practically nothing at Leeds.

Q. Speak of Montana.

A. In Montana there is practically nothing but Helena and Great Falls.

Q. Helena and Butte?

A. Helena and Butte, I mean. There is a place called Boulder, where they meet; the name is not down here; it is a small mining town, I will put that down also. The only places of importance are Helena and Butte in the state of Montana.

862 Q. In Washington?

A. Shall I give the population of Helena and Butte?

Q. Yes, you may.

A. Butte, by the census of 1900, had 30,470, and Helena, 10,770. In Washington the points of any consequence, common points, are Spokane, Seattle, Everett. The Northern Pacific also gets now into the Bellingham Bay towns. I will put it down here; that is not mentioned.

863

Q. That is within 60 days?

A. Oh, yes, that is just now.

Q. Well, if you have it before you, give the population.

A. Yes, it is a small place; the population is not here.

Q. The population of Spokane?

A. Oh, of Spokane; 36,848.

Q. Seattle?

A. 80,671; Everett, 7,838. My recollection is that the Bellingham Bay towns have seven or eight thousand. That is about right, isn't it, Mr. Mellen?

Mr. Mellen. Yes, sir. 864

Witness. I have forgotten precisely what they are.

Q. Now, Mr. Clough, the interstate and international traffic of the Great Northern and Northern Pacific, either, of course, originates on their own line or on the line of other carriers?

A. Yes, sir; the business they do is local business, that is, local to their own lines, and exchanging with other carriers to and from.

Q. Where it begins or ends on the lines of other carriers it is handled under what is known as a joint tariff?

A. In respect to the great majority, the great bulk of that class of business; both in quantity and in earnings. 865

Q. What do you mean by joint tariff?

A. I mean a tariff where several carriers having connecting routes, make a through route between one point and another, unite together in a rate, in a single rate through from the point of the origin of traffic to its destination.

Q. In short, it rests upon an agreement made between the Great Northern and Northern Pacific and connecting lines fixing the rate?

A. There can be no joint tariff, in any proper sense of the word, except by agreement of all of the carriers concerned in the tariff and putting it out. 866

Q. Mr. Clough, I show you paper marked "No. 4-A, Transcontinental Freight Bureau, West-bound Tariff, naming Class and Commodity Rates, effective July 1, 1902," and inquire if that paper shows the railway companies with whom the Great Northern and Northern Pacific had a joint tariff, between what points it applied and the number of railway companies parties to it.

867 A. This is an illustration in general form and nature of joint tariffs, and shows upon its face the parties intending to join in the tariff; the names of the railroads on the first page might be called the parties of the first part to the tariff, in a sense. There are eighteen roads. Shall I read them?

Q. Yes.

A. Atchison, Topeka & Santa Fe Railway; Burlington & Missouri River Railroad in Nebraska, (that is a part of the Chicago, Burlington & Quincy Railway); Canadian Pacific Railway; Chicago, Rock Island & Pacific Railway; Colorado
868 Midland Railway; Colorado & Southern Railway; Denver & Rio Grande Railroad; Great Northern Railway; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Missouri, Kansas & Texas Railway; Missouri Pacific Railway; Northern Pacific Railway; Oregon Railroad & Navigation Co.; Oregon Short Line Railroad; Rio Grande Western Railway; St. Louis & San Francisco Railroad; St. Louis, Iron Mountain & Southern Railway; Union Pacific Railroad. I might say that these eighteen roads are roads operating in the territory west of the Missouri river and between there and the Pacific coast. The parties of the second part, so to speak, are about 120
869 roads in the part of the country eastward of the Missouri river and connecting with the lines mentioned on the first page of this leaf, and all together furnishing through routes between practically all important traffic centers of the country east of the Missouri river and all the country west of the Missouri. Is it desired that I should read the names of all these roads?

Q. No.

A. There are about 120 of them.

Q. What is the reason, occasion and necessity for entering into such joint tariff on the part of the Great Northern and
870 the Northern Pacific?

A. Why, it greatly facilitates the movement of traffic. In the first place, many of these routes that are named here, or rather, I should say, in many instances, connect important traffic centers in the eastern part of the country with important points in the western part of the country. It is necessary for the traffic to pass over from three to six and maybe ten lines of road, possibly; and if each road had its own sep-

arate billing and handled the business locally, it would greatly obstruct the movement of traffic. It would be more expensive for the carrier, as a rule. It would be a great deal higher 871
priced for the shipper because the sum of the local rates is generally considerable in advance of the through rate.

Q. That is, the through joint rate?

A. Yes, sir; the through joint rate. So, in order to permit business to move, it may be said, in large volumes, such arrangements as are provided for in tariffs of this class are entered into; and it is that class of arrangement, I think, that marks the railway system of the United States as extremely 872
superior to those of other countries. It makes a single route out of so many individual routes, combining them into one for a continuous passage.

The defendants offer in evidence defendants' Exhibit 5, being a "No. 4-A Transcontinental Freight Bureau West-bound Tariff, naming Class and Commodity Rates, effective July 1, 1902."

Q. Now, that exhibit shows the parties to the joint tariff?

A. To that joint tariff. There are other joint tariffs, but it shows the parties to that joint tariff.

Q. This is the sheet or page to the tariff, but it does not, 873
of course, contain the rates.

A. It shows what the routes are and the companies parties to that particular joint tariff.

Q. And that tariff is filed with the Interstate Commerce Commission?

A. Yes, sir, it is filed there. All interstate tariffs have to be.

Q. This is a tariff of 1902?

A. 1902, effective July 1, of this last year.

Q. State whether tariffs of like character have been in 874
force during the years you were connected with the Great Northern.

A. Similar tariffs, yes, sir, for many years past. They are more complete, I think, from year to year, but this method of making a tariff is very old; it has been in force for a great many years.

Q. I show the witness two papers, one headed "Great Northern Railway Line," showing per cent of earnings,

875 marked defendants' Exhibit 6, and another headed "Northern Pacific Railway Company, Statement of Freight and Passenger Earnings for Fiscal Year ended June 30, 1901," marked defendants' Exhibit 7. What do Exhibits 6 and 7 show?

Mr. Day. We will object to the first page of the Great Northern exhibit (being Exhibit 6), unless it is first ascertained that Col. Clough is competent; we can't permit that to go in as true without the testimony of some witness who knows it to be true.

Mr. Grover. I didn't mean to offer them now; I present
876 them for identification, to get them marked.

Q. What do those exhibits show?

A. The first page is in the nature of—

Q. Of which exhibit?

A. This is Ex. 6. The first page of Ex. 6 is in the nature of an index or resume of the matter that appears upon the following three pages; the entire exhibit is intended to show the distribution of the interstate traffic for the year 1901 upon the lines of the Northern Pacific Railway Company.

Q. The Great Northern, you mean?

A. The Great Northern Railway Company between that
877 competitive with the Northern Pacific Railway and that non-competitive with the Northern Pacific Railway.

Q. Now, speak as to Ex. 7.

A. Page 1 of Ex. 7 is intended to be an index or resume of the matters appearing upon the next three pages of the exhibit, and the exhibit is intended to show the distribution of the interstate traffic for the year 1901 upon the lines of the Northern Pacific Railway Company, between that competitive with the Great Northern Railway Company and that non-competitive.

Q. State whether the figures on the two exhibits are ac-
878 curate or what means you have taken to determine their accuracy, the inquiries made.

Mr. Grover. Of course, if you desire, I will bring up the accountants.

Witness. I will state, if you desire, how these are made. The figures on the last three sheets of each of these exhibits are compiled by the accounting department of each company, that is, the Northern Pacific and Great Northern, from their

records and statistics, made through the year 1900 and 1901. 879
These years end June 30, 1901, and according to the custom of railways the year is named according to the year in which the ending occurs. These are compiled in the accounting department of the respective roads in the regular way, from statistics of the departments, made through the year, as represented here, as the way-bills come in and the traffic is moved. They were instructed to be made correctly. They are as correct as any statistics kept by railroad companies can be, and each is certified by the chief accounting officer of the company; that of the Northern Pacific by Henry A. 880
Gray, comptroller; that of the Great Northern by J. G. Drew, comptroller.

Q. The figures are made up from each way-bill showing the respective shipments?

A. If I may be allowed to state how all traffic statistics of railroads are kept. It is done usually in this way, and by these companies in the method that I mentioned; the station agent at the station where a shipment is made, or where tickets are sold, especially where shipments of freight are made (I will explain that first), makes out a way-bill for the freight that is shipped, stating the name of the consignor, the name 881
of the consignee and the place of destination, the amount and quantity of traffic shipped, the rate, and a number of other little items of that character. The station agent at the shipping point sends regularly, under the rules of the company, to the chief accounting officer, or department, rather, an abstract of the figures in that way-bill. When the traffic arrives at the station of destination with the way-bill, the station agent at that station, to insure correctness, transmits to the accounting department an abstract of it also, and when these abstracts come in from the two ends of the route, the accounting department checks one against the other, and that 882
is the ultimate basis of all the accounts of the railway company,— the way-bill. When these abstracts come in men are set at work recording the substance of them in records under each station, and from month to month; so that for each month in every year each railroad company has in its office all of the figures relating to each shipment that has been made during that month. These figures contained here are

883 abstracted from those records. There are a great many people in that method of doing business directly concerned with such statistics, and I presume it would be no exaggeration to say to show from the original sources of information about railroad statistics of that character it would probably be necessary to call about 1,500 or 2,000 witnesses. But these are of the same class as all other railway traffic statistics and are intended to be perfectly reliable. The earnings account of the company depends upon them, upon their correctness.

Q. The work is tabulated from day to day and condensed?

884 A. Yes, sir.

Q. Reduced to the figures from which these exhibits are made?

A. Yes, sir.

Q. You asked that they be made correctly?

A. Yes, sir; I personally attended to it since I have been here. There were very many men, of course, necessarily engaged in this work; I think in each company about fifteen men were employed in making these figures. But that is the method by which such great figures have to be gotten together; they can't be in any other way.

885 Q. Now, for the purpose of showing rates which can be controlled by the joint action of the Great Northern and the Northern Pacific alone as competitive rates, I call your attention to Ex. 6 and ask you to state the percentage and the amount in dollars.

A. I will refer to the second page of Ex. 6, to the third page of Ex. 6 and to the fourth page of Ex. 6, which is a consolidation (the fourth page) of the figures on the second and third pages.

Q. Will you for convenience let the stenographer mark those pages?

886 A. Well, I will re-mark them. These exhibits, on account of the shortness of time, were copied by typewriters in different places, so that they are not paged consecutively. One typewriter made the last three and another typewriter made the other. Now, referring to page two of Ex. 6: The total freight earnings of the Great Northern Railway line, which includes Great Northern, Eastern Railway of Minnesota, Montana Central, Willmar & Sioux Falls, and Duluth, Watertown

& Pacific Railways, for the year ended June 30, 1901, were 887
$21,623,653.95. The above earnings consist of the following: Local to the several states through which the line passes, (that is, traffic which both begins and ends in its transit in the same state) earnings $7,013,050.96. I may say that these tables are made up on the basis of earnings, because if they were made up on the basis of weights and quantities of traffic the figures would be so large that the work of making the tables would be very much increased. The earnings will show the proportions of traffic approximately, as well as the quantities. Interstate traffic $14,610,602.99. The Interstate 888
freight earnings were made up as follows:—

Mr. Day. Now, Mr. Grover, we haven't had the opportunity to examine these papers to ascertain (if we can, if it is within our power) their correctness and their accuracy. They may be. I have no reason to doubt they have been made up as Col. Clough says, but what he is now about to read, subsequent to the first statement, is inference or conclusions from facts. We wish to reserve our objection to the paper, but some time hereafter we may withdraw the objection, but at this time we object to the competency—not the relevancy, but to the competency—of this form of proof. 889

Mr. Grover. Well, of course, when we get through with Col. Clough, if you persist in it, think it best, we will bring our accounting departments.

Mr. Day. Perhaps Col. Clough later, on cross-examination, can tell us what he knows about this.

Witness. I think I have told you all I know about it and the comptroller knows just as much as I do.

The Examiner. Well, the objection will be noted, and it may be withdrawn later, if necessary.

Witness. The original source of information about any traffic statistics, including those that are in the sworn reports 890
to the Interstate Commerce Commission, are made in the manner in which I have stated. There is no individual you could call that would have any personal knowledge of it; that is, it would not be practicable to call anybody.

The following part of the answer of the witness was read: "The Interstate freight earnings were made up as follows:"

891 Witness. First. Interstate business forwarded from and to towns where the Northern Pacific also has stations, but which towns can also be reached by other lines of railway, amount to $974,999.17. The percentage of the entire interstate earnings for the year, 6.67. Second. Interstate business forwarded from and to towns reached by Northern Pacific and Great Northern Railways only, earnings $380,117.53; percentage of total interstate freight earnings for the year, 2.60. Third. Interstate business originating or terminating on connecting lines carried by junctions common to Northern Pacific and Great Northern railways and which was destined to
892 or forwarded from towns on the Great Northern Railway where the Northern Pacific Railway also has stations that are reached by other lines of railway, earnings for the year $2,249,642.91; per cent of entire interstate freight earnings for the year, 15.40. Fourth. Interstate business originating or terminating on connecting lines carried via junctions common to both Northern Pacific and Great Northern railways and which was destined to or forwarded from towns reached by Northern and Great Northern railways only, earnings for the year, $79,805.69; percentage of the entire interstate
893 freight earnings for the year, .55. Fifth. Interstate business not included in above four subdivisions, $10,926,037.69; percentage of the whole interstate earnings for the year, 74.78. That is of the freight.

Q. Now, I don't believe it is necessary to read them all. Can't you just make a general summary? I want a little explanation about it now. Is the Northern Pacific, Ex. No. 7, made on the same basis and does it show the same——

A. It is made on the same basis and made in the same way, and the information that is contained here comes, as I have explained at the beginning, from the way-bill that was issued
894 by the station agent when the traffic was started.

Q. When it is to a connecting line or from a connecting line, where do you get your information?

A. The information is the same way because if a shipment is to a connecting line the station agent on the home line forwards his abstract to the accounting department, and the station agent or officers of the receiving company send their report back to check against it to the office of the home com-

pany; so that the information is obtained—it has to be. It 895
is the entire basis of all the financial figures in regard to the operation earnings of the railways. They have to come from abstracts of the way-bills from the two ends of the route.

Q. At what stations reached by the Great Northern and Northern Pacific are other lines—junctions?

A. At Fargo, North Dakota. Well, I will say, commencing in order, at Wahpeton, North Dakota, there is the Milwaukee & St. Paul; at Fargo, North Dakota, the Milwaukee & St. Paul is present also; at Butte, the Union Pacific system is present; at Spokane, the Union Pacific system is present; at 896
Seattle and at Everett the Canadian Pacific and Union Pacific, by means of water lines, do business in and out all of the prominent points on the Sound.

Q. What effect do those connections have upon the rate-making power of the Great Northern and the Northern Pacific?

A. I beg pardon?

Q. What effect do those connections have, these various lines?

A. You mean the presence of a third party?

Q. Yes. 897

A. Whenever there is a third carrier, connecting points that are connected also by Northern Pacific and Great Northern, the rates between the points connected could not be raised by the Northern Pacific and the Great Northern acting by themselves, because if they should raise the rates the traffic would go to the other line having the lower rate, if that is what you mean.

Mr. Grover. I will offer Exs. 6 and 7 in evidence.

Mr. Day. We stated our position, Mr. Grover. The cross-examination of Col. Clough may clear up any doubts we have.

Defendants' Exs. 6 and 7 received subject to the objection. 898

Witness. I might say here, in addition to what I said before, that the first page on these exhibits is my own work, and it is intended to be an index or a compilation to show at a glance the results that it seemed to me are the inferences necessary to be drawn from the sheets following. But if I am not correct, of course the sheets will speak for themselves. They are all put in together, simply for convenience.

899 Q. I forgot to ask you, I will ask you now, the amount of holdings in the Northern Securities Company of the gentlemen named by Mr. Hill as associates, Mr. Kennedy, Lord Mount Stephen and Lord Strathcona, J. W. Sterling, Willis James, Mr. Thorne, Mr. Johnson Livingston, Mr. Lamont, Mr. Payne, Mr. Tuck, Mr. Clark and Mr. Baker.

A. Do you mean in the Great Northern?

Q. In the Northern Securities Company; the Great Northern also, if you can.

A. I had prepared a memorandum showing the exact fig-
900 ures of those holdings in the two companies, but by accident I left it behind in New York, but I remember in a general way.

Q. State the percentage.

A. In the Great Northern Company the holdings of those gentlemen never exceeded thirty-three millions of dollars, I would place it as an extreme figure, that is my recollection, out of about 125 millions. Their holdings in the Northern Securities is almost exactly in the same proportion; about thirty per cent—between thirty and thirty-five per cent.

901 CROSS-EXAMINATION.

By Mr. Beck:

Q. Of course, Col. Clough, you do not mean to say that the associates that have just been named by Mr. Grover are the only stockholders of the Northern Securities Company or of the Great Northern Company who act in association and sympathy with Mr. Hill?

A. So far as that is concerned, I might perhaps be permitted to make an explanation; since the Great Northern took over the lines of the Manitoba Company, on February 1, 1890,
902 I am more especially familiar with the conditions. I also was with those of the Manitoba Company which has now practically passed away. There never has been between the stockholders of the Great Northern Company any agreement about any common use of their stock; neither has there ever been any solicitation by the president of the company of support from the individual stockholders. All that has ever been done has been to disseminate among the stockholders of the

Great Northern periodical information as to the state of the 903
business of the company and its progress and the usual formal request that is sent out in all companies, or announcement, rather, of the approach of an annual stockholders' meeting for the election of directors, the request for proxies and the blank form of a proxy for the individual holder to sign and transmit as he should see fit. There has been no solicitation other than that. That has resulted in proxies for the annual meetings of the Great Northern coming in I think in no year less than eighty per cent and sometimes eighty-five and ninety per cent of the total stock. That is the only associa- 904
tion or co-operation there has ever been, except as it has been possible to personally consult a number of the larger stockholders whom Mr. Hill refers to. If that answers your question?

Q. No, it doesn't, quite.

A. Perhaps I didn't understand it.

Q. Well, I will acquit you of any desire not to answer. It is not exactly what I am after. The suggestion of Mr. Grover's question was that Mr. Hill's holdings with the friends that are in his group, both with respect to the Northern Securities Company and the Great Northern Company, were 905
relatively small. Now, I want to ask you, whether, as a matter of fact, taking the Great Northern Railway first—whether there has ever been any lack of unanimity in supporting Mr. Hill's policy?

A. Never has been, if that is what you mean.

Q. They have agreed with the unanimity of a stage chorus as to what Mr. Hill desired?

A. I have stated the result. As a common thing from 75 to 80 per cent of the stockholders sent their proxies for the re-election, it may be said, of the old administration.

Q. So, as a matter of fact, there has been, in your recollec- 906
tion, no contest over the control of the Great Northern by Mr. Hill and his immediate group of friends?

A. Well, I don't think that Mr. Hill or his immediate group of friends have ever had control of the Great Northern.

Q. I am not speaking now of the legal control as to their respective stock holdings, but the practical control of the road. Has Mr. Hill's and his associates' control of the North-

907 ern Pacific road been seriously disputed within your recollection?

Mr. Grover. You mean the Great Northern?

Mr. Beck. The Great Northern, yes.

A. The Great Northern road has always been controlled by its stockholders and the majority, acting individually; and, as I have said before, when the time for the annual election came around, from 75 to 80 per cent of the total stockholders sent in their proxies favorable to the re-election of Mr. Hill as president.

908 Q. And in support of the policy which he advocated?

A. Well, naturally that would follow.

Q. And, therefore, when their holdings were carried over into the Northern Securities Company, Mr. Hill had back of him the same influences with respect to the stock holdings of the stock thus transferred?

A. The Northern Securities Company has not yet held an annual meeting, but it is very likely that when the annual meeting is held and the stockholders of the Northern Securities send in their proxies, those will be favorable to the re-election of Mr. Hill as president of the Northern Securities

909 Company. I presume so; that is what we expect.

Q. Yes. Now, Col. Clough, Mr. Hill has had a continuous policy with respect to the railway situation in the Northwest, running back a number of years?

A. Running back for 30 years, practically.

Q. And step by step, developments have progressed to carry out and effectuate that policy?

A. Yes, sir; as rapidly as the conditions of the company and the ability to get money would permit. The road has grown from 400 (or so) miles in about 1877 or 1878 to nearly 6,000 miles (that is, the system under one control) at the

910 present time.

Q. Now, of course, you recall the fact that a part of that policy was, prior to the year 1896, the direct acquisition of the Northern Pacific by the Great Northern?

A. No, sir.

Q. Well, what was the attempt which was made to make a practical merger of the two systems which the supreme court declared to be invalid?

A. Well, I don't remember any time when any practical 911
merger of the two roads was ever suggested.

Q. Well, do you recall the fact that the supreme court was of opinion that there was an illegal attempt to consolidate the Great Northern and the Northern Pacific?

A. No, I don't know that. I was familiar with all of those transactions, and as I remember it (subject to correction) there was an arrangement that Mr. Hill had made by which stockholders of the Great Northern Company should acquire a certain amount (I think it was one-half) of the stock of the Northern Pacific Railway Company to be reorganized. As I 912
remember, it was held by the supreme court that that was practically a holding of one-half of the stock by the Great Northern Railway Company, and the laws of the state of Minnesota forbid one railway company to hold even one share of another railway company which had a parallel and competing line, and it was held that the one-half of stock which the shareholders of the Great Northern were to acquire was practically the acquirement of Northern Pacific stock by the Great Northern Railway Company, and that the Great Northern Railway Company could not hold one share of the stock in the Northern Pacific. It was never contemplated to merge 913
the two companies at any time, that I ever heard of.

Q. Now, without in any way discussing the nicety of terms as to merger, of which there is perhaps a technical and a general meaning, I want to ask you whether we are to understand you to say that the attempt of the Great Northern Railway to acquire one-half of the capital stock of the Northern Pacific, in return guaranteeing its bonds, was not an attempt to control the Northern Pacific road?

A. By the Great Northern?

Q. Yes. 914

A. No, sir, it was not.

Q. What was the purpose of acquiring one-half of the capital stock of the Northern Pacific road?

A. The purpose (which we conceived was entirely misunderstood by the court) was what it purported to be on its face; that the stockholders of the Great Northern Company, as individuals, should acquire, in addition to their own holdings, the holdings of the other company.

915 Q. In order to have a common interest in its operation?

A. In order that the stockholders, as individuals, might be interested in both companies.

Q. You mean the stockholders of the Great Northern should have an interest in the operation of the Northern Pacific?

A. In the stock.

Q. And to that extent the incentive and inducement for competition between the two would be eliminated?

A. It was never thought of. The subject of competition between the two roads was never thought of, never entered
916 their minds; at least I never heard it spoken of.

Q. Do we understand you to say that in your opinion there was thus no attempt on the part of the Great Northern to get control of the Northern Pacific?

A. Not any attempt to put the control of the Northern Pacific in the Great Northern Railway Company.

Q. Is it not a fact that much less than 50 per cent of the stock will, for ordinary purposes, give control?

A. Well, I didn't know it and——

Q. Is it not a fact that Mr. Hill, with his group of friends, with their relatively small holdings in the Great Northern
917 to which reference has been made, have found that sufficient to control the Great Northern Railway?

A. It was not the holdings in the stock that Mr. Hill and his friends had that induced the great majority of the stockholders to send their proxies favorable to his re-election. It was the favor with which the policy of Mr. Hill and his associates had met for years that induced all the other stockholders as a body, practically, to support that policy and to favor its continuation. It wasn't any holding that these other gentlemen had at all. That had nothing to do with it.

Q. You think, then, that the fact that a strong group of very
918 rich men, controlling 35 million dollars of the common stock of the Great Northern Railway, had nothing to do with their effectual control of the operations of the road?

A. Absolutely nothing. I know from my own knowledge it had nothing to do with it. It was merely the support that the majority of the stockholders gave on account of their favoring the policy of Mr. Hill.

Q. You think there was no gravitation on the part of the 919
small stockholders towards the holders of large individual blocks of stock——

A. Not in this case, not a bit of it.

Q. Who were already in control?

A. No, sir.

Q. Well, whatever be the opinion of counsel of the Great Northern road as to the objects of the attempt to buy the Northern Pacific on foreclosure, the fact remains that it was decided by the supreme court that that was an attempt to get the control of the Northern Pacific road; and it is a fact 920
also, is it not, that the supreme court held that if that were valid, a control of all the railroads of the United States would be equally valid?

A. Does counsel wish me to express my views as to what the supreme court decided, or will he be contented by having me refer to the decision itself as to what it did decide?

Q. Well, perhaps the decision will speak for itself.

A. I can give my views; it would require some time.

Q. Now, what year was it, as near as you can recall, that the formation of this securities holding company was first dis- 921
cussed?

A. It must have been at least five years ago when Mr. Kennedy was out here from New York. He was not in very good health, and he was getting along in years; his holdings of Great Northern securities were very large, and he desired that they should have the same treatment, in the event of his passing away, as the treatment of his own associates; either that they should be held, or if they were sold his estate would get the benefit of the same price. That was largely what he was after.

Q. I am coming to that in a few moments. I only want to 922
first fix the time. How do you fix the time that it was about five years ago?

A. That is an indefinite period; it was a long time; it may have been seven or eight.

Q. Do you recall the fact that it was, therefore, about the time that the supreme court declared invalid the attempt to control the Northern Pacific?

923 A. No; I connect it with the last time that I recollect Mr. Kennedy having gone over the line of the Great Northern Railway, which I think was about five years ago, it might have been six. He was out here and spent some time, and went over the lines of the Great Northern road; and when he came back—he stayed here some time—and when he went East he had a special car; I happened to be going East at the same time and I sat in his car all the evening after leaving St. Paul until bedtime, in going to Chicago, and he discussed the matter there, brought it up again.

924 Q. It was Mr. Kennedy's suggestion, then, originally?

A. I don't know who mentioned it first. It is back so far that I wouldn't undertake to say, but Mr. Kennedy's mentioning it at that time, on the occasion of his visit and when I went down to Chicago with him, that is very clear in my mind as a first beginning of clear recollection on the subject. Before that time my recollection is hazy, but I remember Mr. Kennedy's visit and my going down with him in the car and his bringing up the subject at that time.

Q. And that you locate as five or at least not more than six years ago?

925 A. Why, I think it was about five years ago; that is my recollection. I don't think he has been over the Great Northern road since that time; I have no recollection of it.

Q. Now, the Great Northern Railway itself was a holding corporation?

A. A leasing corporation and a holding, both. It leased from the St. Paul, Minneapolis & Manitoba about 38 hundred miles of road. The rest of the system, practically all, is owned by other companies which have been promoted by the Great Northern, and the Great Northern interest is represented by stocks and bonds of those companies.

926 Q. Well, then is the Great Northern directly an operating company?

A. Yes, sir; it directly operates about four or five thousand miles of road, between four and five thousand; probably its direct operation would represent about 42 hundred or 43 hundred miles.

Q. And to the extent of the balance it is a holding corporation?

A. It is a holding corporation and a directing corporation, 927
yes, sir.

Q. Now, I understand you to say that four or five years ago, therefore, Mr. Hill and Mr. Ker[illegible], and the other gentlemen immediately allied with him reached the conclusion that it was desirable to form this holding corporation?

A. Well, not *this* holding corporation.

Q. I don't mean with any particular name, but I say a holding corporation.

A. That by Mr. Hill, Mr. Kennedy, Mr. D. Willis James, Mr. Thorne, and indirectly from Lord Strathcona and Lord Mount 928
Stephen—their representative was over here occasionally—it came from them indirectly. They were of the opinion, as they had acted together so long and their holdings were so large and they were getting along in years, that it would be better if something could be done so that their holdings of stock could be treated in the same way and have the same treatment, either by holding or by selling.

Q. The age, then, of the respective stockholders and the fact that in the natural course of life they would not live so very long, was the main inducement to this attempt to form 929
a holding corporation.

A. That was what they stated, that is what they said. And their holdings were so very large, to secure for their estates a fair treatment of their stock.

Q. The original idea was a close corporation of a limited number of individuals?

A. That was the purpose, yes, sir, as expressed by those gentlemen.

Q. In order to effectuate a common control of certain holdings of stock?

A. Simply that certain holdings of stock should stand together as long as they were held by these various gentlemen; 930
or, if they were sold, so that they sold all together and be subject practically to the same price.

Q. But if that was the purpose, Col. Clough, why did not the eleven gentlemen who held these stocks put their stocks in the hands of a common trustee, so that they could not sell without the consent of the trustee?

931 A. They didn't want to tie things up as tight as that. They were willing to take the chances of the fair treatment of their holdings in a corporation the stock of which should be issued to them and be held by their estates. In other words, they were willing that the stock of the suggested corporation—the majority of it—should determine all those things.

Q. But, in the matter of holding them together, how was the formation of a new corporation any more effectually to prevent a sale of the stock than the holdings in the Great Northern Railway?

932 A. It was only this: that the selling or keeping of these stocks, in whole or in part, would be determined by a majority of the stock that represented these shares. They were willing—in other words, each of these gentlemen was willing that the handling of his stock should be in the hands of what would represent a majority of all the holdings in the new company, but they didn't desire to tie up the new company at all. They didn't think that that would be considerate or politic, to put it in the hands of a trustee. They were willing to trust to a corporation, that would act through a majority of its stock, the future of their holdings. They were willing

933 to do so, so they said.

Q. Do I understand that it was contemplated in the formation of this proposed securities holding company that its respective stockholders could not sell their respective holdings except with the consent of the majority of the corporation?

A. The purpose was that they would absolutely sell their holdings in Great Northern stock to a new company to be formed.

Q. I am not referring to the sale of the Great Northern stock; I am referring to whether or not your idea was to tie

934 together this group of interests, if it was contemplated that no one in the new holding corporation could sell his stock.

A. Oh, on the contrary.

Q. Without the consent of the others?

A. On the contrary. That was to be entirely free, and in each estate which should hold it in the place of the Great Northern stock it should be held absolutely by each individual holder independently of the other holders, and he should be

at liberty to sell if he should see fit. But it was believed that 935
the interest—the mutual interest—of all the stockholders in having their securities kept as valuable as possible, would secure a policy for the management of the stocks that would be the best for all. They were willing, in other words, to rely upon that; that is all they could rely upon.

Q. There was, then, no more ability, by creating a new corporation to hold the stock in the hands of the same person or his family, than in the old corporation?

A. None at all, none at all, not the slightest.

Q. And Lord Strathcona's heirs could sell quite as well in 936
the holding company as in the Great Northern Company?

A. They would be entirely free to sell their stock, yes, sir.

Q. Therefore, the only real purpose of the holding corporation was to compel a certain unity of action by a majority of the holding corporation deciding what was to be done.

A. It was so that all of the stock which, not by agreement, but by a sense of mutual interest, had kept together in building up this property and making its value, as far as could be provided in the way that I mentioned, should be held together.

Q. Now, that was the only idea of the holding corporation?

A. That, as I heard it expressed by the gentlemen; I am 937
merely expressing their ideas.

Q. Certainly.

A. Not my own.

Q. I understand that you never heard Mr. Hill or Lord Strathcona or Mr. Kennedy or any of the other gentlemen associated with Mr. Hill express any other opinion as to their motive for forming a holding corporation than the desire to make a close corporation of their common interests?

A. In the beginning, until the enlargement came that I mentioned.

Q. When was the enlargement? 938

A. The enlargement came through the suggestion, that I have mentioned, by Mr. Morgan and some of the Great Northern stockholders, that the other holders of stock of the Northern Pacific and of the Great Northern, respectively, should have an opportunity, if they chose, to sell their stock to a holding company upon the same terms.

Q. At what time, in what year was that?

939 A. That was last year, and I think I have stated it; I believe the first suggestions of that kind came along in May or June of last year.

Q. In May or June?

A. Yes.

Q. But I understood you to say that the definite suggestion didn't come until Mr. Morgan made it?

A. It didn't assume form; it did not assume form.

Q. And he was in Europe during the summer of 1901?

A. Until the 4th of July.

940 Q. And it was, then, after the 4th of July that the first definite proposition was made to change the character of the holding corporation by making it more than a mere group of individual stockholders of the Great Northern?

A. I think it must have been; that is my recollection. Of course I can't attempt to fix the precise dates, but I think the insistence of Mr. Morgan, after he got back in July, caused the crystallization and formation of the general idea that the corporation probably should be made—ought to be made broad enough so that no stockholder of either the Northern Pacific or Great Northern could feel that he had been 941 excluded from the advantages of any arrangement that the other stockholders had entered into with regard to their stock.

Q. Well, I am entirely right, then, in the suggestion that until Mr. Morgan made the suggestion that there ought to be some combination, through a holding corporation, of the Northern Pacific and the Great Northern, the only idea that was in the mind of Mr. Hill or his associates was to pool their stock together in the Great Northern in a security company.

A. I never heard any suggestion for combining the Northern Pacific and the Great Northern. I have never heard it yet, from any of the gentlemen interested in the Northern Securi- 942 ties Company or the Northern Pacific or Great Northern. I think as early as May, if you desire to know—I think as early as May, I am sure as early as May, the idea as it first started of a holding corporation was enlarged to include the holding of Northern Pacific as well as Great Northern—holdings of these gentlemen. I think that came in some time along about the 1st of May or somewhere in that neighborhood.

Q. Before or after the great panic in the New York Stock Exchange? 943

A. Well, I am inclined to think about the same time.

Q. About the same time?

A. As I have explained, these gentlemen were constantly going and coming to and from New York and the country, and they never were gotten together or in a position where all of them could be consulted until along in the latter part of the year, along in the fall, when everybody got back from the summering places and from Europe, etc., and that retarded the development of the matter and the final filing of 944 the articles for several months.

Q. Well, now, what was there that for nearly four years, or quite four years, had delayed the formation of this holding corporation?

A. Nothing except simply they didn't get at it; they were all very busy men; some of them in Europe, some in New York, Mr. Hill here, and they never got all together.

Q. You have stated that these gentlemen were of the opinion that it was a matter of great importance that their stocks should be placed in this way in a common pool; what was the delay of four years in making the corporation? 945

A. Well, I think I stated that the first mention that I heard of it was by Mr. Kennedy; that makes a distinct impression on my mind now, why Mr. Kennedy didn't take that matter up with Lord Strathcona, Lord Mount Stephen (they lived in Europe, they came here very infrequently). Why he didn't take it up and push it through more early with Mr. James of course I don't know. He is a man of very large affairs and very busy, and has many other things besides his holdings in this property, but I presume—it is a mere matter of inference—why those gentlemen delayed was because of the infrequency with which they got together. I should presume so. 946

Q. Very well. Now, you have stated in your testimony in chief, that a part of the time that was thus lost (at least a part of the time in which the formation of this company was postponed) was due to the fact that Mr. Grover was seeking for some charter with special privileges; to quote your exact language, "A charter which would put the holding corporation beyond legislative control." I want to ask you, if the

947 only purpose of the holding company was to make a pool between ten or eleven gentlemen, what necessity there was to seek for a charter beyond legislative control?

A. I don't know that I used that exact language—"legislative control."

Q. I took it down, Colonel.

A. What I meant to say, if I did say that, was an amendment of the charter that might radically change the purposes and objects of the corporation. That is what I referred to.

Q. How under any charter could the legislature affect the
948 mere right of Mr. Hill and several other gentlemen to hold their stock?

A. Many of the states in this country have constitutional provisions and some of the others, perhaps, have statutory provisions that all incorporations made under the general laws of the state shall be subject to amendment or repeal by the legislature. It was to avoid any violent interference by legislative authority with the great properties that the company expected to have, because it would at least amount to probably 75 millions in value and might amount to hundreds of millions.

949 Q. Oh, yes, but you have testified that this group of gentlemen who originally contemplated no more than their own association did not hold more than thirty-five millions, it being a minority of the Great Northern Railway Company stock. Now, therefore, I ask you what necessity there was, if this was the innocent purpose of the holding corporation—what necessity there was for such a prolonged search after a charter beyond legislative control?

A. Great Northern stock then was worth in the market, during the summer of 1901, the early part of it, around 180, a little above it; it had been worth more than that. So that
950 the 33 (or odd) millions that these gentlemen had in value represented pretty nearly seventy or eighty millions of dollars; and that was quite a sum. And naturally a gentleman owning a large amount of property would not want to put it into a corporation if he felt that the charter might be taken away from it or might be radically amended, or if the legislature should assume to determine how the property of that company should be managed and controlled. That was the idea.

It would be very large in any event. The value would be in 951
the neighborhood of or quite 70 millions of dollars at the lowest.

Q. Then, do I understand that the purpose of putting it beyond the possibility of legislative control was to prevent any legislation that would affect the operations of the Great Northern Railway?

A. No, sir, not in the slightest degree; just of the stock.

Q. That particular stock was not intended to operate the Great Northern Railway?

A. Not the slightest, not a thought of it. 952

Q. And it being a minority of the total capital stock of the Great Northern, it could not operate the Great Northern Railway?

A. No, not at all, and it didn't refer to the operations of the railway.

Q. Its one purpose was to put the stock in a common pool and to collect its dividends and disburse them; that is right, isn't it?

A. It was to own. It wasn't to be a pool at all. It was to be an absolute owner of the stock. It would naturally collect the revenues on the securities that it would own. That would 953
be natural, of course. It would collect the revenues on whatever securities it owned; if it owned Great Northern stock, and the Great Northern Railway Company continued to pay dividends, it would collect those dividends; and if it had any surplus after its expenses were taken care of, it naturally would pay a dividend on its own stock, to the stockholders; but there was no pooling of the stock.

Q. What else was the holding corporation to do except to collect and disburse dividends?

A. It was to own. That is, the idea was that it should own 954
the stock the same as any other stockholder. That was the idea; that would be the natural inference of course.

Q. Well, then, I want to press my question again: What reason there was for a prolonged search for a charter that would be beyond legislative control.

A. You do not express my view when you use the words "legislative control" correctly. What I meant was, a violent and radical change; any violent or radical change or repeal of

955 the charter, or any legislative interference as to the manner of its holding of the property.

Q. Do I understand you to say then it was your opinion that unless some charter was found of a particular kind that the legislature could deprive these stockholders of property rights?

A. In many states they can. In the state of Minnesota it is questionable.

Q. Do you think that could be done under the constitution of the United States?

956 A. Well, under the decisions of the Supreme Court, the limitations of the legislature upon vested rights are very uncertain now—have become so.

Q. When did Minnesota first adopt a state constitution?

A. I think in 1858.

Q. Was this search for a charter prior to 1858?

A. Prior to 1858.

Q. And you preferred, therefore, to have a Minnesota charter prior to your existing constitution?

A. Yes, sir, if we could find it, that would have the necessary powers for carrying on this business and be properly con-

957 stituted for it, for the reason that under our constitution all charters antedating the admission of the state into the Union became fixed legislative contracts, and those charters have been very much sought after by railroad companies and other companies since the state came into the Union—very much; regarded as very valuable.

A recess was here taken until 2 o'clock P. M.

AFTERNOON SESSION.

958

The hearing of testimony was resumed at 2 o'clock P. M.

W. P. CLOUGH, was recalled, and his cross-examination resumed, as follows, by Mr. Beck:

Q. Col. Clough, when was the necessity for some special charter first discussed?

Mr. Grover. The question assumes what has not been 959
proven.

Mr. Beck. Then, I will say the desirability of some special charter.

A. Oh, very early,—when the subject first began to be mentioned.

Q. Do you mean five years before the formation of the Northern Securities?

A. Oh, I presume so. It was mentioned by way of suggestion pretty nearly as early as the suggestion of the formation of a holding company. Let me say, by way of explana- 960
tion, that that is a question we meet very much up here,—because since the formation of the constitution, in 1858, the formation of corporations is under a general law that is subject to extensive alterations by the legislature; and for that reason a large number of special charters that were passed when Minnesota was a territory have been very much sought after and extensively used by railroads that have since been built, by financial institutions of various kinds and business corporations. They have been regarded valuable because of the supposed or presumed protection against vio-
lent legislative changes. And when any question of a rail- 961
road or a large business concern comes up here, for years that has been thought that has come early in the minds of those who would be entrusted with the organization. So it came up this time, just as it would with any other large important enterprise.

Q. Had the charter of the Great Northern Railway Company been acquired prior to the adoption of the constitution?

A. Yes, sir.

Q. And does that apply also to the present charter under which the Northern Pacific operates?

A. The present charter of the Northern Pacific is a Wis- 962
consin charter,—a special charter granted many years ago; I have forgotten the exact date, but granted many years ago by the state of Wisconsin. That is since the reorganization of the Northern Pacific. Before the Northern Pacific was reorganized there was a charter granted by the government containing conditions that before it was used in any state the consent of the local legislature should be obtained. In

963 1896 the property was sold under foreclosure and acquired by the present Northern Pacific Railway Company, which is a Wisconsin corporation under a special charter granted many years ago. I don't remember the number of years, but it is an old charter.

Q. Then, the matter of the procuring of a special charter had been in discussion for some years prior to the actual formation of the Northern Securities Company?

A. The two subjects naturally arose in close association with each other.

Q. When did Mr. Kennedy go to Europe in 1901?

964 A. My recollection is now (and I state it from mere recollection) that it was sometime early in the month of April.

Q. Do you recall when he returned?

A. Well, it was sometime in June, if I remember correctly, when the warm summer weather was about beginning; but I can't pretend to give dates, I didn't charge my mind with it.

Q. When did Mr. Grover commence his search for a special charter?

A. Why, I think that he and I, and probably in connection with Mr. Hill, had been talking about that question on the

965 previous occasions when it had been suggested, as it had come up through the years from time to time. I think all of us had directed our attention toward the question of the probable existence of some invioiable charter.

Q. But that is not my question. I am not speaking about the desirability of special charters for general purposes, but when was the search first made for a special charter for this holding company that was contemplated?

A. In the event of its formation?

Q. Yes.

A. Oh, I think years ago. I mean not necessarily a thor-

966 ough search, but I think to some extent. The old enactments were glanced through with a view of seeing if there was anything that would meet the desires and purposes of such a corporation.

Q. Well, why then, in your testimony this morning, did you state, in answer to a question, that it was very soon after Mr. Kennedy went away that the question was more closely considered and it was thought desirable, if a company of that

kind were formed, that it should have the stability—that a 967
charter beyond the power of legislative amendment should be acquired for it if possible?

A. I did not mean to be understood that it was then thought of for the first time. It was then thought of, but it had been thought of previously. And then began a systematic search and investigation of the question, such as had not been given to it before.

Q. And what time was that? You say you defined it as after Mr. Kennedy's return?

A. No, it was after Mr. Kennedy went to Europe.

Q. Yes, you are right; after Mr. Kennedy went away,—and 968
that you say was in April, 1901?

A. I think it was April or May, sometime along that time.

Q. It was about the time, therefore, of the contest for the control of the Northern Pacific by the Union Pacific interests and the Morgan interests so-called.

A. No, it was long before any public developments of that character; at least long before anything of that nature was known or suspected or even deemed probable, and it had no reference to any operation of that character—not the slightest. 969

Q. How do you know that if you can't recall when it was that Mr. Kennedy went away?

A. Well, I feel quite sure, from the fact that I went to New York myself and arrived there about the middle of March and that he left within a few days after that, that he must have left around the first of April.

Q. Now, do I understand you to say that in this discussion of the necessity or the desirability of a special charter, that it had reference solely to the formation of a Great Northern holding company?

A. In its origin, in its beginning? 970

Q. No, I mean to say at the time, now, that Mr. Grover commenced his search for a special charter. At that time was simply the Great Northern under discussion?

A. So far as I can recall, in the very beginnings it was confined to the Great Northern. The precise dates when the proposition or the suggestion was made that the same gentlemen who contemplated selling their Great Northern stock

971 to the Northern Securities Company might also well sell their Northern Pacific, I can't remember just the time when that was first suggested; in fact I don't pretend to be precise upon any of these dates, because all of these matters came up in conversations as the gentlemen interested would come into the office or we would meet them elsewhere. And let me say that there was no meeting or conference at any time. The gentlemen whose interests were expected to go into the holding company, as I have explained, were scattered; some were in Europe, some were in California and others were in other places. So that it was impossible to have any meeting,
972 and that was one thing, in fact the principal thing, that delayed the formation of the Northern Securities Company and the filing of the articles until so late in the fall,--that it was impossible to get the gentlemen interested together for any consultation; it had to be taken up in detail and as the gentlemen could be met and as they were met casually. So when any particular proposition came up or was suggested it would be impossible to fix the date.

Q. Well, you don't mean to say there were no meetings for the purpose of forming the Northern Securities Company, in
973 which the Northern Pacific interests participated as well as you, subsequent to the great May panic?

A. No, sir, there never were any meetings at all.

Q. Never at any time?

A. Never at any time.

Q. Do you recall Mr. Morgan's testimony as to meetings?

A. Mr. Morgan's testimony I heard. Mr. Morgan testified about a meeting of exclusively Northern Pacific shareholders to try to make some arrangement that would restore confidence in the money markets of the world, but that had absolutely no reference to the matter of the Northern Securities
974 Company in any way. Absolutely irrelevant to that.

Q. Then, the meetings to which Mr. Morgan, Mr. Steele, Mr. Schiff and others have testified had no reference at all to the formation of the Northern Securities Company?

A. Nothing at all. And let me say again there never was a meeting held in reference to the formation of the Northern Securities Company.

Q. Never was a meeting held?

A. Never was a meeting held, no, sir. It was just merely 975
carried along; it had to be by casual meetings of the different gentlemen who were interested.

Q. Its formation, then, was the fortuitous concourse of atoms to which scientists refer?

A. That is a matter for the counsel to satisfy his own mind upon the facts.

Q. If there was no meeting at all, but a certain number of individuals by coincidence amalgamated, then it would be just simply the accidental meeting of so many minds.

A. I have stated the facts as to how the company was or- 976
ganized, and all these other things are for the gentleman to draw his own inferences.

Q. I am going to ask you again (without in any respect, in this or any other question, wishing to be offensive to you) to reiterate your statement that at no time prior to the organization of the Northern Securities Company was there ever a meeting held on the part of any of the parties in interest to effectuate its formation?

A. Nothing that could be called a meeting.

Q. Well, what do you call a meeting?

A. I will explain this. There never was any time when 977
even as many as four gentlemen were called together on any one occasion to consider the subject of the formation of the Northern Securities Company.

Q. But you don't dispute at all that there were meetings of Mr. Morgan and Mr. Hill, for example, of Mr. Hill and Mr. Schiff, or Mr. Hill and Mr. Harriman, or Mr. Harriman and Mr. Kennedy, all of which had a common purpose in view, namely, to form the Northern Securities Company?

A. No, sir; I deny that there ever was any such meeting. That is, as far as I know or had any reason to believe.

Q. Now, what was the objection that you have stated that 978
Mr. Grover reported? I quote your words exactly: "An examination into that subject"—namely the special charter—"was set on foot. Mr. Grover, who was on the ground here, was entrusted with the subject of looking that matter up. That occupied necessarily quite a considerable time, and I believe we did not get the report of Mr. Grover (I am stating

979 from recollection now) until sometime in May." Was that report in writing?

A. My recollection is (it goes back to a considerable period) that Mr. Grover wrote a letter to Mr. Hill at some length upon the subject, and I think also that I saw Mr. Grover personally one or more times in that interval; I am not sure about that, but I think I did,—in which it was also gone over personally, but I won't speak about the personal interviews because my recollection is not clear upon that subject. But I do remember the letter on the subject.

Mr. Beck. Counsel for the Government, then, calls upon
980 the defendants to produce the letter addressed by Mr. Grover to Mr. Hill.

Witness. Well, I have no recollection of where it was, and the date of it I couldn't tell.

Mr. Beck. Well, of course we don't expect you to have it about you. We simply note the call for the letter.

Witness. Yes.

Q. Now, you have stated in substance, as I recollect it——

Witness. Of course I may be wrong in my recollection that it was a letter. I have a recollection of something in writing. That is all I can say.

981 Q. What were the objections of Mr. Grover found to such special charters as he did discover? In what were they defective?

A. If I remember correctly, Mr. Grover produced the copies of perhaps something that he found, I am not sure about that, and it appeared upon the reading of the substance of the act of the territorial legislature that it would be at least doubtful as to whether the powers were sufficient to enable it to buy and hold and manage stock——

Q. And to own stock?

982 A. And to own stock, yes. That is all we were looking for —was just simply something that would have the requisite power.

Q. And it was impossible to find any special charter prior to the adoption of the constitution of Minnesota that would enable you to carry out your plans?

A. That is, that was not already in use for some other financial institution. I am simply speaking so far as we could see from looking over the records.

Q. Did I understand you to say that some exploration was made into West Virginia for a charter? 983

A. No, I didn't say so.

Q. Well, I ask you the question because my recollection is vague

A. No, sir.

Q. Well, I think you did say that an investigation or an examination was made of other states for special charters.

A. If you will allow me to restate what I think I said, that when we gave up the idea of finding the special charter in the state of Minnesota, it was then suggested (I don't remember by whom; by some of the gentlemen, perhaps by myself) that the incorporation be under the laws of some state having general laws for the incorporation of companies with requisite powers to deal in securities; and as I remember, those three states that I named were suggested. 984

Q. Which three states were those?

A. They were New York, New Jersey and West Virginia—as having legislation of that character.

Q. Well, was there an examination made as to whether there was any adaptable special charter in either New York or West Virginia? 985

A. Not the slightest; there never was any inquiry about either of them, or any suggestion.

Q. Therefore, having exhausted the Minnesota field, you had recourse to that last resort of noble corporations—the state of New Jersey?

A. Well, that was the state that was finally selected.

Q. Now, is it not a fact that the state of New Jersey was selected because of the plenary powers given to corporations to do anything?

A. My recollection is (going back to last summer) that the laws of New Jersey were not dissimilar from those of New York, that they were quite similar, but there was this difference: the laws of the state of New York, which had evidently been passed with a view of enlarging her legislation to put it on a parity with New Jersey, were of very recent origin and had not been construed by her courts, whereas the statutes of the state of New Jersey upon that subject had been in force for quite a good many years and the law was regarded to be 986

thoroughly well settled. That was the main difference, I think.

Q. You therefore thought that the fullest powers, as judicially determined, could be found in a New Jersey charter?

A. We wanted to be certain that when we went into business with a concern that might possibly have three or four hundred millions of dollars of property, there would not be any doubt at all about what that corporation would be authorized to do.

Q. Ah, but you have said, Col. Clough, that at the time you were discussing this question of a special charter your capitalization was not contemplated to be beyond 35 millions.

A. Not at that time.

Mr. Grover. No. Wait a moment.

Mr. Beck. Well, the witness is very intelligent and can protect himself.

Witness. Mr. Grover, if you will let me I will set the counsel right. He has evidently forgotten. Now, firstly, if it is of any importance at all, I said in my testimony in chief, I think, that the amount of Great Northern stock which it was expected the new corporation would buy was that of these gentlemen who held thirty or thirty-five millions—*of Great Northern stock*. I think I stated upon cross-examination the fact that that stock—Great Northern stock—was worth at least 180 and at times had been as high as 200. So that the value of the stock contemplated in the beginning was in the neighborhood of 70 millions of dollars, and that would be the value of the property, around 70 millions of dollars, that the corporation, with the most limited holdings that were ever suggested, would have. So it would be a big corporation in any event and would own a great amount of property, and for that reason we wanted to know exactly what the rights and powers of the corporation were.

Q. Then, it is correct that at the time when you were discussing the sufficiency or insufficiency of the Minnesota charter, the matter of capitalization of 400 millions was not contemplated or under discussion?

A. At the time we had arrived at the point where we satisfied our minds that it was not probable that there was any special Minnesota charter that we could procure that con-

tained the necessary powers, I don't think at that time any 991
definite sum of capitalization had been arrived at. I am very sure that came later. We had not in our minds fixed what the capital would be, but from the great value of the property which was intended to be purchased by the new company it was known in any event it would be very large and it would be a very large corporation. That is about what we had arrived at in that particular.

Q. Col. Clough, how long before the actual formation of the Northern Securities Company was it that you did determine upon the New Jersey charter? 992

A. It was a very few days; I don't think it could have been more than five or six days before the articles were filed; it was probably just about five or six days. There were the two states, New York and New Jersey, with very similar legislation, and it was a question really between those two which should be selected, and we could not make the selection without consulting a number of the gentlemen who were to be largely interested, who were around in various parts of the country and did not get back. That is what detained it.

Q. At whose suggestion was it that the Northern Pacific stockholders began to be consulted with reference to this 993
amalgamation?

A. Well, with the exception of the Northern Pacific stockholders who also were Great Northern stockholders, I don't think they ever were consulted, at least prior to the organization of the Securities Company, unless it might have been to this extent, to ask of Mr. Morgan whether, in the event of the formation of a corporation of that character, he would be willing to sell to it his then holdings of Northern Pacific stock. Other than that I do not believe that any Northern Pacific stockholder was ever consulted about it.

Q. Was Mr. D. Willis James a stockholder in the Great 994
Northern?

A. Great Northern and Northern Pacific both.

Q. Northern Pacific also?

A. Yes, sir.

Q. When was it that he expressed his opinion or made some suggestion with regard to the form of the charter?

995 A. Why, I don't know that I can attach that to any particular dates. My recollection is that after I went to New York in the spring of 1901, Mr. James was in California, where he is in the habit of spending his winters, for a month or more; and when he came back—he has always been a large stockholder in the Great Northern, from the beginning, and a man of high business position and prominence in New York, of excellent judgment; I think I met him very often, I think I discussed all the questions that arose very frequently with him; probably met him more frequently than any of the other gentlemen.

996 Q. And what was the suggestion that he made with regard to the form of the charter, or character of the charter?

A. Why, I don't recollect, so far as the form of the charter was concerned.

Q. Well, I understood you to say this morning (and I may have misunderstood you) that after Mr. James came back from California he had some suggestion to make with regard to this matter of the character or form of the charter.

A. No, I don't remember that I said anything of the kind except in a general way, that the desire was to have a corpora-

997 tion that beyond any question would have the right to own and hold the stock. But I do not think Mr. James ever made any special suggestions as to the language of any special charter or of any articles of incorporation. I remember showing him the draft of the articles, which I originally made, for his examination, and it contained the substance of what afterwards went into the articles of incorporation. There was practically no change in the substance of it from the beginning. Slight changes of phraseology from time to time. He appeared to be satisfied.

Q. He made no suggestion with regard to the form or the

998 character of the corporation, that you recall?

A. Well, that is a broad question, and I don't know precisely what you mean by "the form or character of the corporation."

Q. Well, as to what state you should get the charter from, or as to what its powers should be.

A. Mr. James, of course, was consulted upon those questions. He was consulted upon all the questions, but I can't

remember any language that he used in the course of any 999
conversation I had with him. Mr. James came frequently to the office of the Great Northern Railway Company where I had a room, and I also saw him frequently in his own office because I had other business with him that brought us in contact very frequently. Most of the conversations with him, as well as with Mr. Kennedy and Mr. Thorne and the others, would be brought up whenever the parties happened to meet together, generally twos and threes, not larger than that, upon other matters. These were all men of very large affairs and very numerous business engagements and their time was very much occupied, so that it was difficult to get them to- 1000
gether.

Q. Well, now, Col.,——

A. But if you will allow me to finish that.

Q. Certainly.

A. When the decision was finally made upon the state in which the articles should be filed, I think that was mostly left to myself. I had not made up my own mind, I couldn't, the matter was of such large importance, I wanted to make full inquiries, and I did as much as I had time to, and I think it was left very largely to my own judgment more than to any 1001
other one.

Q. What power was it that this holding corporation was to exercise that justified this prolonged investigation in regard to the character of various charters and which finally determined you to use a New Jersey charter which had been judicially tested?

A. It was to have beyond any question the power to purchase, own and hold and dispose of corporate securities on a large scale.

Q. And that was the only power that made you doubtful as to whether a charter of one state or a charter of another state 1002
would be ample for its purpose?

A. Yes, sir, that was the main proposition.

Q. Now, isn't it a fact that the character and form of this charter first became a burning question after it was determined to amalgamate or put into a common holding corporation the Northern Pacific and the Great Northern Railway interests?

1003 A. Well, firstly, the form of this corporation never became a burning question at any time.

Q. Well, it seems to have been a subject of prolonged consideration.

Mr. Griggs. Yes, on cross-examination.

Mr. Beck. Well, it seems to have been preliminary to the formation of this corporation.

Witness. That came, as I have explained before, mainly from the difficulty of getting the views of the seven or eight or ten gentlemen who were to be largely interested in this corporation. They were so scattered that it was impossible to
1004 see more than one or two at a time, and that is what did more to prolong the final determination of details here and the placing of them on paper and putting them on file than anything else.

Q. But these gentlemen were not making a search after the charter?

A. I didn't know that I had testified they were.

Q. No.

A. No, I wasn't aware of that.

Q. Therefore, their absence from the city or their inability
1005 to get together had nothing to do with it, except the final meeting when you passed upon it and determined it, which you said was a few days.

A. There never was any final meeting. There never was any preliminary meeting or any intermediate meeting or any final meeting.

Q. How, then, was it determined to take out a New Jersey charter, if you never held any meeting?

A. When I decided in my own mind that the advantages were in favor of the laws of the state of New Jersey, as they were well understood, as I saw the gentlemen I imparted my
1006 views to them and they acquiesced. That is the way it was done.

Q. Tell me this, what advantage had a New Jersey charter in the matter of the acquisition or holding of stock over a charter of the state of Minnesota?

A. I have stated to you my views on that subject; that the laws of New Jersey are very clear and well understood upon that subject. A great many corporations of that kind have

been incorporated under the laws of New Jersey. Her stat- 1007
utes on the subject have been well understood and have been construed, and there is very little doubt or uncertainty as to them, whereas the state of Minnesota is new in that class of corporations. There are no large business corporations incorporated under the laws of the state of Minnesota; she never has had any. There has been no occasion to put powers that are given by her general statutes to such organizations under judicial question.

Q. Then, I will ask what advantage had the New Jersey charter, when you decided upon it, over a New York charter? 1008

A. I stated that also a little while ago,—that my impression was that as the laws of the state of New York, which had been passed for the purpose of placing New York and New Jersey on a parity, were of very recent origin and had not yet been put to judicial determination and I did not know what view the New York courts might entertain, and the concern was to be so large, we wanted to know exactly what the powers of the company were.

Q. Well, at all events I am right in saying that a final decision as to the state in which you were to incorporate the holding corporation was not reached until after the holders of 1009
the Northern Pacific Railway Company's stock and the holders of the Great Northern Railway Company's stock had agreed to put their stock in a common corporation.

A. I don't think that I so stated.

Q. Well, is it a fact or not?

A. I will state, as I said before, that the ultimate and final determination to incorporate under the laws of the state of New Jersey was not reached until a very few days before the articles of incorporation were filed, and after that they were prepared and filed just as soon as they could be.

Q. I repeat the question: Before you reached the conclu- 1010
sion to take out a New Jersey charter, Mr. Morgan's interests and the Great Northern interests had agreed to place their holdings in a common corporation?

A. Before that was done, as I have stated before, the gentlemen who were stockholders of the Great Northern and who also held stock of the Northern Pacific, and Mr. Morgan himself (the holdings of Great Northern being, I think it was,

1011 about 33 millions and of the Northern Pacific about 42 millions all together, somewhere in that neighborhood, about 40 or 42) had decided that they would sell their stocks to the new company when created. Now, it was after that decision relating to those stocks and, as I said, only a few days before the articles of incorporation were actually filed, that the conclusion was ultimately reached to incorporate under the laws of the state of New Jersey.

Q. Well, that is what I was trying to get at.

A. Yes, sir.

1012 Q. Now, you have stated that the holders of Great Northern and Northern Pacific stock, other than the immediate associates of Mr. James J. Hill, were not solicited in any way to put their stock holdings into the Northern Securities Company.

A. Even James J. Hill was not solicited to put his stock of either Northern Pacific or Great Northern into the Northern Securities.

Q. I am not asking whether Mr. James J. Hill was solicited, because the solicitor rarely requires to be solicited, but what I am asking you is whether I understood you to say that there

1013 was never any solicitation on the part of stockholders other than James J. Hill and his group of allied interests to put their respective holdings into the Northern Securities Company.

A. I want to answer that just as I did before, that nobody (including Mr. James J. Hill) was ever solicited by the Northern Securities Company to sell any part of his stock (either Northern Pacific or Great Northern) to the Northern Securities Company.

Q. Did not Mr. James J. Hill, by letter dated November 30, 1901, in reply to inquiries that had been addressed by stock-

1014 holders to the Northern Securities Company, say as follows: "The offer contained in the circular came from the request of the large holders of Great Northern, above mentioned, who desired that all other holders might have the same opportunities as themselves in association with them, and upon the same terms. The writer is of opinion that the offer of the Securities Company is one that Great Northern shareholders can accept with profit and advantage to themselves"?

A. What is the question? 1015

Q. The question is whether Mr. Hill did not address such a letter to those making inquiry of the Northern Securities Company as to whether they should put their respective holdings into the Northern Securities Company.

A. Well, now, if you will allow me to state—I think Mr. Hill has already stated, but I will repeat it: The Northern Securities Company, on the 22nd of November, as I remember, issued a circular, which has been introduced in evidence, and you have it before you.

Q. Yes, that is the letter. 1016

A. That circular of November 22nd was issued

Q. Well, if you will pardon me, Col. Clough; I don't want to interrupt you——

A. Now, excuse me. I just want to get to this. I am all through.

Q. I am not speaking of the circular of November 22nd. I am speaking of the circular of November 30th.

A. There was no circular of November 30th,—that is what I am trying to explain to you.

Q. All right. Now, explain that.

A. There was a circular issued November 22nd, which has 1017
been introduced in evidence and which you have before you. That was an offer by the Northern Securities Company to purchase such stock as should be tendered to it within a limited period, about sixty days. After that circular had been received by parties comparatively near by (that is, living in this country), a number of them wrote to Mr. Hill letters of inquiry about the circular and the Securities Company. Mr. Hill was about to leave for the West; he was very much pressed for time, and it was thought very probable that other letters of inquiry would be received at the office, addressed to him, during his absence. It was desired not to burden him with send- 1018
ing all of those letters of inquiry out to Minnesota, for him to make detailed answers to. So, before he got ready to leave New York he drew up the form of a letter, which is the form you have, dated November 30th, to be sent to such stockholders of the Great Northern as should address him at the New York office letters of inquiry during his absence.

Q. To the New York office of what?

1019 A. To the New York office of James J. Hill.

Q. As a matter of fact were not those circulars sent out by the Northern Securities Company?

A. No, sir; none of them ever sent by the Northern Securities Company.

Q. Were not the inquiries that were addressed to James J. Hill, to the New York office, sent to the Northern Securities Company for attention, as he was the president of that body?

A. No, sir, not one of them. I am sure none of them were.

Q. Having read to you the statement of Mr. James J. Hill,
1020 the president of the Northern Securities Company, in which he advises a sale of the respective holdings of Northern Pacific——

Mr. Griggs. Well, that is the trouble, you are misstating the language. He didn't advise anything of the kind. If you will make your question so as to say "after reading that portion of the circular" all right, but I object to your putting into the question the legal effect as you conceive it.

Mr. Beck. I am very sure that if Col. Clough thinks the question is unfair to him, he can say so.

Mr. Griggs. Well, he isn't the only person interested.

1021 Mr. Beck. It is only a question of the interpretation of the language. If there is any man, woman or child on earth who would not, after reading that letter, take it as advice to sell his stock, I am very much mistaken.

Q. Having had read to you the letter of Mr. James J. Hill, do I still understand you to say that no one connected with the Northern Securities Company in an official capacity advised holders of Great Northern Railway stock to sell their holdings to the Northern Securities Company?

A. That was not the question you asked me before. I will answer the question you ask now by this statement. You
1022 have before you the circular of the Northern Securities Company of November 22nd.

Q. No, I haven't—yes, that is right.

A. Yes, you have.

Q. No, I haven't.

A. Well, it is in evidence. You have the form of a letter which was sent to individual stockholders upon inquiry. Both documents will speak for their own contents, and any one can

draw his own inference. If you desire my inference, it is, as 1023
I said before (which is a fact) that the Northern Securities Company has never solicited any person to sell to it any stock of any kind, either Northern Pacific or Great Northern.

Q. Well, then, I understand you now to state that you mean that the Northern Securities Company as a corporation never solicited any stock?

A. Not only that, but I do not think any officer of the Northern Securities Company has ever done so. I don't regard that draft of letter, the personal letter of Mr. Hill, as a solicitation. However, that is a pure matter of inference. My 1024
judgment is worth no more than that of anybody else on that subject. But that is the view I take of it. It will speak for itself, whatever it is.

Q. Col. Clough, do I understand you to say that the only purpose of forming the Northern Securities Company, either in its inception or as finally planned by comparison of views with Mr. Morgan and other interests, was to place the holdings of the Great Northern and the Northern Pacific in a position of security?

A. Firstly, I want to repeat what I said before. There was no comparison of views with Mr. Morgan about the Northern 1025
Securities Company except to the extent that he was asked if he would sell his stock to a corporation of that kind. Secondly, the sale of the stock (Northern Pacific and Great Northern stock) to the Northern Securities Company was undoubtedly made by each individual seller because each thought it would be a good and profitable thing for him to do. That is all I know about it. I don't know what his motives were.

Q. Well, I am not asking for the motives of 1,800 or 1,300 stockholders.

A. No. I don't know what their motives were, but I suppose they thought it was a good thing to do. 1026

Q. It has been repeatedly stated here by you and other witnesses that the only purpose was in order to place certain stock holdings of Mr. Hill and associates beyond—to give them stability by pooling them in a common corporation. Now, I want to ask whether that was the only reason that prompted the formation of the Northern Securities Company——

1027 A. Yes, sir.

Q. —on the part of those who were responsible for it?

A. The purpose, as I said, in its origin—the only thought that I have ever heard expressed in its origin, in regard to the Northern Securities Company, related to keeping together all the stock of the gentlemen I have named as being those who were consulted. So far as the other stockholders were concerned, comprising the great majority of the stocks of both the Northern Pacific and Great Northern, and comprising the great majority of the stockholders of the Northern Securities Company,—those gentlemen were given an opportunity to come in because the other gentlemen who had promoted this company thought that it was only right and fair to give every stockholder in the same class with them the same opportunity for whatever advantages (if there were any) which would arise out of the sale of their stock to the Northern Securities Company.

1028

Q. There was, then, no intention at all after the great struggle for control of the Northern Pacific, to promote peace in the financial world by the formation of the Northern Securities Company?

1029 A. No, sir.

Q. None at all?

A. No, sir.

Q. Therefore, the fact that Mr. Harriman sold his 78 millions to the Northern Securities Company, and Mr. Morgan put in his large holdings of Northern Pacific, and that Mr. Hill and his associates put in their large holdings of Great Northern, had nothing to do at all with the community of interest plan of which so much has been said?

A. So far as I know, it had not.

Q. Do you also say it had nothing at all to do with——

1030 A. Now, if you will excuse me one minute and let me finish my answer. I don't know what may have been in the mind of any individual stockholder when he offered to sell his stock to the Northern Securities Company. I assume he thought it would be an advantageous thing for him to do it. But about the elements that were in his mind as making up that advantage of course I have no means of knowledge.

Q. I don't ask concerning a number of insignificant people 1031
that drifted with the current; I am speaking of the really big men in this thing; with whom you were associating and conferring in New York. Now, do you mean to say in your testimony in this cause that the creation of peace in the railway world had nothing to do with the formation of the Northern Securities Company?

A. I don't think it had anything at all.

Q. Do you also say that the increase in this indirect way of the capitalization of the constituent companies had nothing to do with the formation of the Northern Securities Company? 1032

A. Now, if you will allow me to answer that. You speak of an increase in capitalization. Let me ask you what you mean by that? Do you mean that there have been issued Northern Securities Company shares for the purchase of Great Northern and Northern Pacific to an aggregate amount of more than the shares in the two railway companies?

Q. Oh, no, I am not referring to that at all. I will tell you what I am referring to. What was the capitalization of the Great Northern Railway Company, for instance, in the year 1898? 1033

A. You mean in the year 1891.

Q. No, I mean in the year 1898.

A. If you will permit me to state I think I can help you.

Q. Yes.

A. When the Great Northern leased the Manitoba Company in 1890, February 1, the capital stock of the Great Northern Company was 20 millions of dollars. It was increased at various times from that time until along about 1900 (my recollection is) or 1901, possibly might have been 1901.

Mr. Grover. It was before 1901.

Witness. It had been increased before 1901. My recollec- 1034
tion is that the last increase took effect in 1901, increased to 125 millions of authorized capital, of which 123 and odd millions (that is, millions and odd hundred thousand) are now outstanding. Now, if you wish to know about those increases: Each one of those increases was sold to existing stockholders of the Great Northern at par for cash or its equivalent, and represented 105 millions of dollars of additional cash invest-

1035 ment. The increase was 105 millions, and that was for 105 millions of dollars of cash or its equivalent in bonds, at par, which were worth that on the market,—worth par or more.

Q. In the year 1898 what was your common stock?

A. The common stock of which?

Q. Of the Great Northern Railway?

A. The Great Northern Railway has never issued since 1890 more than one class of stock. Let me say that all the stock of the Great Northern goes under the name of preferred stock. That came about in this way. In 1890, when the Great North-
1036 ern was about to take over the St. Paul, Minneapolis & Manitoba——

Q. Well, Colonel, unless you desire this, I don't want to cumber up the record.

A. There is only one class of stock, if that is what you want to know.

Q. I don't care about the reason for it. What was, then, the so-called preferred stock in 1898?

A. This paper you show me here states what it was. I won't vouch for the correctness of the figures upon it. Along about 1898, I don't remember the exact year, it had reached
1037 a hundred millions of dollars in round numbers.

Q. In 1898?

A. Yes, sir. Oh, no, not in 1898. About 1900, before the last increase.

Q. Well, I am asking about 1898.

A. Well, as I have mentioned, it was first 20 millons, and then it was increased and the new stock sold for cash or its equivalent in securities.

Q. First, I want to get what was the stock in 1898.

A. Well, I don't want to state from your paper. I don't know whether this is a correct compilation, but I will give
1038 it to you exactly.

Q. Can you tell me approximately? Was it over 30 millions in 1898?

A. I think it was, but I will give you exactly what it was; I will get it.

Q. Do you know what the mileage was in that year?

A. If you call for it I will give you the stock and mileage of each year since 1890.

Mr. Richards. I wish you would, Colonel. 1039

Witness. I will give you the mileage of the system for any years you want, and the capital stock.

Subsequently the witness forwarded to the Examiner such statement, which by consent of all parties is received in evidence and marked defendants' Exhibit 8.

Q. Eliminating the Burlington, how much has the mileage of the Great Northern road increased since 1898?

A. New road has been built every year, and in addition to that great amounts have been laid out in the improvement of the property and additional equipment.

Q. Tell me whether this paper is approximately correct, and 1040 if you feel the slightest hesitation about vouching for it, approximately, I will abandon that line of questions.

A. Let me answer this, which I think will cut it short. There never has been an increase in the stock of the Great Northern road from the beginning that was not sold at par and for cash or its equivalent in securities, and every dollar went into the property; and, in addition to that, many millions of dollars out of the earnings of the property. Whether it went for lengthening the road or for the betterment of the existing line and for the increase of equipment, it all went into the property and is in it today, and much more than the 1041 cash from the increase of the stock—very much more.

Q. The holdings of the Northern Securities Company, so far as they represent the Great Northern stock holdings, aggregate 225 millions par, do they not?

A. I beg pardon?

Q. 225 millions. I say the holdings of the Northern Securities Company stock which represent the transfers of the Great Northern stock, aggregate 225 millions.

A. No, sir.

Q. How much was that? 1042

A. A little over 90 millions—about 95 millions of Great Northern stock have been bought and paid for by the Securities Company, at 180.

Q. About 171?

A. About 171 millions Securities Company stock have been issued to pay for Great Northern stock.

Q. Well, if all the Great Northern was in it, you would get about 225?

1043 A. Yes, sir, if it were all in.

Q. The corporate securities that now represent the Great Northern property, assuming that all the Great Northern stock was put in the Northern Securities Company, would represent a capitalization of 225 millions as against a capitalization of about 25 millions five years ago?

A. That is not quite correct.

Q. Well, wherein is it incorrect?

A. It is incorrect in this: In the first place, the Northern Securities Company is not buying Great Northern stock, and it would depend on the price at which Great Northern stock
1044 would be bought. If you will look at the circular of November 20, 1901, you will notice that the offer to buy the stock was for a limited period; and while a few lots of stock of the Great Northern have been bought since, that is since the expiration of that period,—the Northern Securities Company is not buying Great Northern stock at 180, and all of the Securities Company stock that can be counted on as representing Great Northern stock is 171 millions. The remaining 30 millions of Great Northern going into Northern Securities would depend entirely upon the price that the Northern Securities
1045 Company would pay for it.

Q. Well, then, there are securities of the Northern Securities Company amounting at least to 170 millions which represent a portion only of stocks which five years ago were capitalized at 25 millions?

A. No, sir. The property which is capitalized at 125 millions is not the same property which was capitalized at a smaller sum before. The property which is capitalized at 125 millions has had 100 or 105 millions out of increased Great Northern stock—and a large amount additional out of the current revenues of the company put into it, and what is rep-
1046 resented by the Great Northern stock today and this year is the result of all of these expenditures, what were made before 1900 and what have been made since.

Q. Are you able to tell how your mileage has grown from 1898 to 1901?

A. It has grown very considerably. It has grown probably five or six hundred miles.

Q. Yes, five or six hundred miles.

A. But the great amount of expenditure has been made in 1047
the improvements and betterments of existing lines and additions to the equipment and things of that kind.

Q. What is the mileage of the Great Northern now?

A. In the system?

Q. Yes.

A. The mileage in the system of railways is about six thousand miles.

Q. Are you including the Burlington?

A. No, sir; I include only the Great Northern system under various companies. In addition to that it includes a fleet of 1048
steamers on the Great Lakes,—two passenger boats and six freight boats, and various investments of that character. The investments of the Great Northern are not confined to railways.

Q. And you think in the last five years the mileage has increased about 500 miles?

A. Oh, I think more than that, perhaps, in acquisitions.

Q. Well, not over a thousand?

A. I will give it to you precisely.

Q. Now, Colonel, do I understand you to say, as far as you know, that none of the astute gentlemen who formed the 1049
Northern Securities Company contemplated the undoubted monopoly, that was made possible, of the railway transportation of the Northwest?

A. What do you mean by that?

Q. Well, I will tell you what I mean. The Northern Securities Company owns a majority of the stock of the Great Northern? Is that right?

A. It does.

Q. It owns a majority of the stock of the Northern Pacific?

A. It does.

Q. It has a voting committee? 1050

A. No, I beg your pardon, it has not.

Q. Has it two voting committees?

A. It has given proxies; it has given proxies for the stock of the Northern Pacific Railway Company, and another set of proxies for the stock of the Great Northern Railway Company.

Q. And they are vested in committees?

1051 A. It is not a committee; they are proxies.

Q. They are proxies?

A. Yes, sir.

Q. Now, therefore, through these two bodies of men that are appointed by the board of directors, are they not?

A. They were selected by the board of directors, yes, sir.

Q. The majority of the Northern Pacific and the Great Northern stock can be voted at pleasure?

A. At whose pleasure?

Q. I say at the pleasure of those holding the proxies?

A. Why, I presume so.

1052 Q. Yes.

A. For certain purposes—if you will allow me to state.

Q. Well, do the proxies that have been given contain any limitation as to the purposes for which they are devoted?

A. The charters do—the charters of the Northern Pacific and the Great Northern Railway Company.

Q. But the charter of the Northern Securities Company does not contain any limitation on the power to vote under proxy?

A. Not the slightest. The limitations on the powers of the
1053 proxies are contained in the charters and by-laws of the respective railway companies, and they cannot cast any vote for any person or any measure otherwise than as the charters of the two companies provide. That is one limitation.

Q. Now, therefore, is it beyond the power of those within the Northern Securities Company who hold those proxies to have the same board of directors for the Great Northern and for the Northern Pacific?

A. Within the power of whom?

Q. I say within the power of those who hold proxies for a majority of the Northern Pacific and a majority of the Great
1054 Northern to select the same board of directors for both corporations?

A. They have exactly the same power as the proxies for the stock of any other two corporations.

Q. Well, won't you answer my question direct?

A. I am answering it directly. I am going to answer it. They have precisely the same power that proxies for the stock of the Northern Pacific and Great Northern always had, and

as proxies for the stock of the Milwaukee & St. Paul and the 1055
Chicago Northwestern always had. I don't know of anything except the laws of the country that prevent the proxies for the stock of one railroad company electing the same people directors and officers (as far as the stock can elect officers) of any other railroad corporation. There never has been anything in either the Northern Pacific or the Great Northern since their foundation, except the laws of the country, that prevented the stockholders of the two companies electing the same board of directors. There isn't anything else now. There is just as much to prevent it now as there ever was; 1056
and there is no more. They stand just the same as they always did.

Q. Then, it is a fact that those who hold a majority of the stock of both corporations can vest both of these great railway systems under one board of directors?

A. The separate stockholders of each company—the separate proxies, if you please (put it that way), of Northern Pacific and Great Northern stock have the same powers and no more powers than have always existed in the majority of the stockholders of both companies, subject to the laws of the country, to elect whoever they please to be on the board 1057
of directors.

Q. And that, I have understood you to say, contemplates the possibility of those in the Northern Securities who hold the proxies, to put both these railway systems under a common board of directors?

A. On the contrary.

Q. Under the same board of directors as its personnel? I am going to have a direct answer to my question.

A. Yes, you are going to get a direct answer, and you have it. Recently you changed your question. Excuse me, but it makes it somewhat more difficult to answer, because the ques- 1058
tion jumps around so much and doesn't stay in a place. In the first place, in your last form of question you assumed that somebody contemplated that the proxies for the Northern Pacific and Great Northern stock were going to elect the——

Q. I didn't say anything about that.

A. I understood you so. No, sir, there is no such contemplation.

1059 Q. I am now speaking of the possible exercise of a power; and what I want to get is the simple, naked fact whether, in your judgment, those who hold the proxies in the Northern Securities Company for the stock of that corporation which represents a majority of the stock holdings of the Great Northern and the Northern Pacific, could elect the same board of directors in its personnel for both corporations.

A. No, sir. And I will tell you why. I was not permitted to finish my answer before or I would have done so then. I spoke of the limitations in the charters and in the laws of the country. There is a provision, I think (if I remember cor-
1060 rectly), in the laws of the State of Minnesota, and many other states where these two railways are operating, that would forbid the officers and directors of one company being officers and directors in the other. Consequently, since the adoption of those laws it has not been in the power of the holders of the stock of the Northern Pacific and Great Northern to elect the same men to be directors of the company or officers of the company. But the formation of the Northern Securities Company has not added anything to nor taken anything away from that power. It stands just as it did before
1061 under the prohibition of the laws of the various states in which these roads are.

Q. This is the fact, that a majority of the stockholders of the Northern Securities Company can control a majority of the Northern Pacific and the Great Northern Railway systems?

A. Well, now, I cannot admit that.

Q. Can't they vote the stock?

A. They can vote the stock of the Northern Securities Company to elect a board of directors—of the Northern Securities Company.

1062 Q. Yes.

A. And the Northern Securities Company can designate proxies to vote the stocks of the Northern Pacific and the Great Northern Railway Companies. But those proxies can only exercise their powers when they come into the meetings of these two companies, in accordance with the charters and by-laws of the respective companies and the laws of the land. Now, when the proxies of the Northern Securities Company

come into these meetings, the laws of the land say that they must elect separate and independent boards, and entirely distinct boards of directors for each company, and that they cannot elect the same men. That prohibition stands just as it always has. 1063

Q. Even if the two boards of directors are different in their personnel, respectively, they both are subject to the common control of the Northern Securities Company?

A. No, sir, they are not subject to any control of the Northern Securities Company.

Q. They can be voted out or in at the pleasure of the Northern Securities Company. 1064

A. When the next election comes and their successors are to be elected, the proxies of the Northern Securities Company again will be confronted with precisely the same conditions as they were the year before, until the laws of this row of states up here are repealed or the charters of the companies changed. If another one is to be elected it will be somebody else than a director of the other company.

Q. I am asking you whether each of the boards of directors of these two great railway systems (assuming now that they are different in their personnel) is not yet subject to the power that created them, namely, the Northern Securities Company? 1065

A. No, sir.

Q. In what respect are they not?

A. They cannot be voted out or in at pleasure because under the by-laws and charter the directors hold their places for a fixed term, which is one year.

Q. Notwithstanding a stockholders' meeting vote them out?

A. No, sir; they hold absolutely for one year; and after the election is made the tenure of office, during the term of office, is entirely independent of every stockholder—absolutely. 1066

Q. You do not seriously dispute, Col. Clough, the moral control of those who elect the directors over the directors?

A. Well, you are talking about a certain indefinite state of things that has no palpable weight at all.

Q. Now, be that as it may, be it legal or moral control, I want to ask you now whether you mean to suggest that when the Northern Securities Company was formed by the responsi-

1067 ble interests that formed it, the suggestion of this common control was never even discussed or considered?

A. No, sir, I never heard it mentioned.

Q. Never heard it mentioned?

A. No, sir, never heard it mentioned. That is, the subject of a common control or the subject of any power outside of the board of directors and officers of the separate corporations managing each company for all there was in it. It never was mentioned, I am sure it wasn't.

Mr. Beck. It wasn't necessary to mention it.

1068 Examined by Mr. Richards:

Q. Col. Clough, just to utilize all the time and to get into the record something which you furnished to me. You agreed at the time of your examination in New York to give me the date when the first batch of Great Northern Railway stock paid for by the Northern Securities Company but not transferred upon the books of the Great Northern Company, was acquired?

A. Yes, sir, and I wrote you a letter giving it.

Q. Yes, I have that letter, and it states on December 11, 1901.

1069 A. Yes, sir; I have the same data here from which I wrote the letter; that is right.

Q. And at the same time you stated that you would give me on that date the amount of holdings by the Northern Securities Company of Great Northern stock standing in its name?

A. Which was also included in the letter.

Q. And that amount, as stated in this letter, was 490,833 shares.

A. That is correct.

Q. That is correct?

1070 A. That is correct, yes, sir.

Q. Let me ask you now whether this date, December 11, 1901, was the date when a certain suit was filed against the Northern Securities Company?

A. Oh, no. The Minnesota suit was filed some time in January following. January 6th was the first litigation in which the Northern Securities company was party. That had no relation to any litigation, but was for the purpose I mentioned in my testimony before.

Mr. Grover. Does that letter state the number of share- 1071
holders of the Northern Pacific outstanding?

Witness. No.

Mr. Richards. No.

Q. Let me ask you, Col. Clough, whether it was not about that time that the governors of certain states in the Northwest met to consider the question of how the organization of the Northern Securities Company affected certain public interests here and certain laws.

A. They may have done so. I didn't change my mind with any dates relating to that subject.

1072

Examined by Mr. Day:

Q. Col. Clough, regarding the rates you spoke of this morning, these rate sheets and tabulated statements.

A. Yes.

Q. When was it that you went to New York—left St. Paul and severed your direct relations with the Great Northern?

A. I went to New York on other business in March, 1901. I mean on other business relating to the company than the Burlington purchase. I had occasion to go there frequently. And after I got there these various matters came up and I was 1073
detained, and have been living there ever since, practically all the time.

Q. When did you cease to be vice-president of the Great Northern?

A. It was some time in the fall of 1901 when I found out that it was necessary for me to spend all of my time in New York. Then I resigned because I could not fill the place; it required a man on the ground here.

Q. Now, when you were vice-president of the Great Northern and taking an active interest in the affairs of the company, were you familiar with the rates and the way they were 1074
made out?

A. Yes, sir; I was very familiar with all of the business of the company.

Q. And in making up this statement you know that the data are preserved by your company for the making of it?

A. As I said this morning (and I can explain more at length), all I know about the correctness of these figures is

1075 the same that pertains to all statistics of railway companies. They have to be made by so many different people that they are like the census of the United States. There is no one individual, or no twenty individuals, or no fifty, or no hundred who can be called to speak of their own knowledge. The Great Northern Railway Company, like the Northern Pacific, has a fixed set of rules for the keeping of its accounts and the reporting of its business.

Q. Well, Col. Clough, you went over that I think to that extent this morning.

1076 A. Yes.

Q. My question was this: whether data were preserved by the Great Northern and Northern Pacific companies showing how traffic was divided, the percentages?

A. I am going to explain to you just how this was made, exactly. The way-bills, as I explained, are the basis of all accountings in regard to earnings, etc. Each way-bill states separately its point of shipment and its point of destination. Abstracts of each separate way-bill are sent to the central accounting department, and those are preserved; and as they come in statistical men are set to work to make record of

1077 those.

Mr. Richards. You explained all that before, Col. Clough.

Mr. Day. I don't want you to go over that again.

Witness. Well, I don't know what you mean, then.

Q. My question was this—

A. Now I know. It is the necessity of the business of the company to make and keep these records because it is the basis of all their financial accounting, and it is through these documents that they are able to report their gross earnings; and they are returned and this work is done; it has to be done; it is a necessity; the roads couldn't do their business

1078 unless it were done.

Q. Now, what I had in my mind was this: whether this was made directly from a tabulation of what these way-bills contain—at this specific time?

A. Yes, sir.

Q. Or was it made from month to month or week to week during the period it covered?

A. These tables were made from records, one for each 1079
month, which is a tabulation of the way-bills of that month.

Q. Did you direct this to be made up?

A. I did, sir, and was in both offices several times while the process was going on, to be sure it was correct.

Q. Whom did you direct to have it made up by the Great Northern?

A. I went to the Comptroller, who is the chief accounting officer.

Q. And the Northern Pacific?

A. The Northern Pacific, the Comptroller, Mr. Gray, who 1080
was the chief accounting officer; and each of those gentlemen, when it was requested, called in the heads of the freight and passenger accounting departments and instructed them to do it; and each one at once (as the time was short) placed each book for each month in the hands of a separate clerk and he went to compiling the freight. The passenger statistics were put in the hands of as many clerks as could work on them. There is no other way of doing it. The figures contained in these sheets that have been presented here, Exs. 6 and 7, for each company, the work of making these particular sheets and taking them from the statistics occupied alto- 1081
gether (officers and clerks) about sixteen or seventeen men in each company.

Q. Now, when did you cease to have anything to do with the traffic and the rates, the way rates were made up on the Great Northern system?

A. When I ceased connection with the Great Northern system, I ceased to know directly about that. But being in the offices and seeing the method in which business is done, I discovered that there is no material change.

Q. Now, this tariff sheet that is marked Defendants' Ex- 1082
hibit 5, what is that?

A. That is what it purports to be on its face.

Q. Will you state briefly what it is?

A. Yes, sir. It is the west-bound joint tariff on class and commodity rates effective July 1, 1902, between the roads operating in the country west of the Missouri river and the roads generally in the country operating east.

1083 Q. Those are the rates that apply in that territory on the traffic mentioned in the tariff?

A. Yes, sir, they are the rates on traffic from points east of the Missouri river to the territory west of there. This is the west-bound.

Q. And that is issued by a traffic association and is the uniform tariff that applies on all those lines in that territory.

A. Well, it is called a bureau now; it is a bureau of information, that is what it is.

Q. Yes, sir.

1084 A. That issues the book for all. It does the printing, to save expense in printing, as the tariffs are identical. It gets a whole lot of them printed.

Q. Now, then, the question I am asking you is this: that contains the rates that apply upon all of those lines?

A. Yes, sir.

Q. They are uniform?

A. They are uniform, yes, sir.

Q. Now, you have in this territory, the territory which is called west of the Missouri river, an Official Classification?

A. Yes, sir, called the Western Classification.

1085 Q. What is the title of that?

A. That is called the Western Classification.

Q. What traffic does it cover?

A. It covers all traffic that moves under the class rates, and carload rates also to a limited extent, because there are a great many special tariffs besides that, in the country west of Chicago and north of the Ohio river.

Q. Now, in conjunction with this do you use the Official Classification?

A. The Official Classification has very little importance in the territory west of the Missouri. It is of great advantage
1086 and value to the companies, all the companies operative in the territory west of the Missouri, the entering into the joint tariffs; because the joint tariffs on all commodities that move in any quantity ignore all classifications. Joint tariffs ignore all joint classification for the great bulk of the business and give the rate on each commodity as a commodity, all the way through from the point of shipment to the point of destination. So that it is not necessary, in regard to any article

that is specified in this joint tariff, to refer to the classifica- 1087
tions at all. That is one great value of it to the carrier and also to the shipper.

Q. In what territory does the Official Classification apply?

A. Well, the western and the official overlap to a certain extent. The Official Classification is north of the Ohio river and east of the Mississippi river. The western classification crosses the Mississippi river and goes to Chicago.

Q. Now, I understand in this tariff, Ex. 5, the rates that are mentioned there are what you call commodity rates—

A. Yes, sir, they are all practically commodity rates in this 1088
tariff, but if you will notice—

Q. Now, when an article that is named in that tariff, destined, we will say, from New York to the Pacific coast, how do you make up the rate on articles of that character that are named in Ex. 5?

A. Have you one of these?

Mr. Day. No.

Witness. Well, I will hand it to you then (handing Mr. Day copy of tariff). On page 21 there are general class rates, but practically the business of the country moves under these commodity rates.

Q. Now, I am asking you where the article is shipped from 1089
the Pacific coast to the Atlantic seaboard, or from the Atlantic seaboard to the Pacific coast, that is not named in this Ex. 5,—

A. That is what I am saying, and calling your attention to page 21, which provides for that.

Q. You use, then, the two classifications to ascertain that rate?

A. Theoretically that would be so; practically, I am inclined to think that most of the settlements are based on the western classification—in practice. 1090

Q. Now, will you just state, looking at page 21, what the class rates are?

A. Yes, sir.

Q. Take the five classes.

A. You mean the five that are numbered?

Q. Yes; carloads.

1091 A. Then there are five that are lettered classes. There are five numbered classes, Mr. Day, and five lettered classes. Now, which do you refer to?

Mr. Grover. Why can't you tear the page out and put it in evidence?

Witness. Page 21.

Mr. Day. Yes.

Witness. Yes, I see those.

Q. Those are the rates that apply on traffic from the Missouri river or from Chicago to the Pacific coast, where the
1092 articles are not named, specifically named, in that tariff sheet?

A. Yes, sir.

Q. In other words, you have an Official Classification on traffic that applies in all instances excepting where the rates in your Ex. 5 apply, which are the commodity rates?

A. Well, I should rather invert that, considering the volume of business. I think immensely the greater portion of the business moves under these commodity rates.

Q. Yes, I am assuming that now. But I am saying now that where the commodity rates do not apply, the Official
1093 Classification applies and fixes the rate.

A. If there is no commodity rate.

Mr. Grover. You use the word "official."

Mr. Day. Well, I mean classification; your western classification.

Witness. If you will allow me to suggest, and so as to have it made clear, the Official Classification is not in force on any of these lines in the west here. What is called the western classification is in force here.

Q. The western classification applies on the territory west of the Mississippi river?

1094 A. Yes, it runs to Chicago.

Q. Now, the point I want to get into the record is this: these are commodity rates, and where a rate is not named in Ex. 5, as a commodity rate, the class rates apply—the official rates on page 21 apply?

A. That is right; that is so far as this business is concerned. Of course there are numerous other tariffs, and this

was only produced as an illustration of what a joint tariff is, so it could be gotten into the record. 1095

Q. I simply wanted to get into the record how the rates are made up.

A. Yes, sir.

Q. You say in this Ex. 5, those are commodity rates and they cover the bulk of the traffic, but where they are not specifically named there, you look to the classification to find it?

A. Sure.

Q. And the class rates are named on page 21?

A. On page 21, yes, sir. 1096

Q. There are ten classes?

A. Yes, sir. I will suggest also, if you will allow me to interrupt—I will suggest that if any part of this goes in except the title page, the number of articles that are specifically covered be counted up, approximately, and that also be stated.

Q. Mr. Clough, did you bring a copy of the classification that took effect—

Mr. Grover hands classification to Mr. Day.

Witness. See if that is the one you wanted; I sent for it. 1097

Q. Is this the classification, western classification No. 29, that applied prior to the taking effect—

A. Various supplementary sheets to these classification volumes, as they are put out, are sent out from time to time; they are issued from time to time, and then as periods elapse they are all condensed into a single volume. This classification pamphlet included everything up to and on July 1, 1899, and thereafter except as modified and added to by subsequent supplementary sheets. I do not see any supplements in here; but I have no doubt there were supplements.

Q. Is that the next classification that was issued after that one? (Showing classification to witness.) 1098

A. I can't answer that question. I don't believe it was. I have a notion that there was at least one volume printed complete between July 1, 1899, and Oct. 1, 1902. I will ascertain this evening.

Q. Now, Col. Clough, to return to this Ex. 6. In this you say "Interstate business forwarded from and to towns where

1099 the Northern Pacific also has stations, but which towns can also be reached by other lines of railway." That is your statement?

A. Yes, sir.

Q. Take Ex. 6, the five divisions that you have made here, do either of these cover traffic that come to the Great Northern or the Northern Pacific from the Burlington?

A. Everything.

Q. On other lines?

A. Yes, sir.

Q. Destined, say, to foreign parts?

1100 A. Yes, sir. If you will allow me to explain—

Q. Well, which one of them would cover traffic that would come from, say, points east of Chicago and destined, say, for Asia?

A. That would come under either "3"—

Mr. Richards. No.

Witness.—or "4" or both.

Mr. Richards. I think not, Colonel.

Witness. Yes, sir, it would come under "3." Just let me read that. (Looking at the exhibit.) Yes, sir.

1101 Mr. Richards. Not at all. I don't see how you can make that good.

Witness. Why?

Mr. Richards. Number 3 says "Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to or forwarded from towns on Great Northern Railway where the Northern Pacific Railway also has stations, that are reached by other lines of Railway."

Witness. That is right. The Asiatic business was in-

1102 tended to be included under "3" because the Northern Pacific and Great Northern points through which the traffic passes are reached either directly by other railroad routes or by other railroad routes in connection with the steamship service. That is, they are all bidding for that business that is indicated in the third paragraph.

Examined by Mr. Richards: 1103

Q. Do you regard freight shipped, say, from Chicago to Hong-Kong, that passes over the Great Northern or Northern Pacific line, destined for a point on either of those lines? It is destined for Hong-Kong, isn't it?

A. But it has to pass through its western terminal.

Mr. Day. It doesn't say so in this exhibit.

Witness. No.

Q. It limits it to freight that is destined to or forwarded from a town on the Great Northern or the Northern Pacific.

A. That is right. It is either forwarded from or destined to and passes through junction points, and at the Pacific coast 1104
terminal it has to pass through the terminal points of those companies and there be delivered to the steamer. The junction points that were intended were eastern terminals, or the junction point was particularly meant a point where the two roads come together and there connect with another carrier beyond. That was the intention of it, whichever way the carrier is beyond. So this was intended to cover both east and west-bound business to and from Asia.

Examined by Mr. Day: 1105

Q. And section 3 does cover that?

A. Yes, sir.

Q. What does paragraph 5 cover?

A. Paragraph 5 covers all business that both originates and terminates on the Great Northern road (in case of the Great Northern), and on the Northern Pacific (in case of the Northern Pacific), where the other company has no station. In other words, where it is interstate business which is strictly local to the several companies and the other company is not there at all, is not competing for the business.

Q. Now, turn to page one of Ex. 6, third division. 1106

A. I have it now.

Q. Take the third paragraph.

A. The third paragraph of page one—I have not a copy of page one of Ex. 6, but I have a corresponding one for the Northern Pacific.

1107 Examined by Mr. Richards:

Q. Just in the line of what I was asking you before and to clear up the matter in my own mind at least; does the third paragraph here include all this great foreign business respecting which Mr. Hill testified?

A. Yes, sir.

Q. So that altogether that amounts, as far as the Great Northern road is concerned—

A. These are earnings, you understand.

Q. Yes, earnings—amounts to only 17 per cent of the earnings?

1108 A. That is what it amounts to.

Q. Or to $2,891,310.69?

A. Yes, sir; that is what it amounts to, that is correct. The fact is, of course, that the immense bulk of the traffic of all kinds on these roads is strictly local to the company—begins and ends at places where the other is not present. I think that is practically true of every railroad in the country. The great bulk of all railroad traffic is local to the road.

Examined by Mr. Day:

1109 Q. Now, Colonel, to return to page one, the third paragraph.

A. Yes, I have the form here of the Northern Pacific.

Q. "The percentage of interstate traffic, the rates on which could be controlled only by agreement with lines competing with Northern Pacific and Great Northern, 6.89 per cent" of the whole.

A. Yes.

Q. What do you mean by that?

A. What I mean by that is: that is a class of business the

1110 transportation of which passes over, firstly, connecting lines. Oh, it is the third paragraph?

Q. Yes, the third paragraph.

A. Oh, excuse me, I was reading the fourth. The fourth paragraph relates to traffic—

Q. Well, I asked about the third.

A. The third paragraph relates to traffic which begins at a Great Northern and Northern Pacific common point, as, for

instance, for the purpose of illustration, St. Paul, and goes to 1111
another common point on the Northern Pacific and Great Northern where another railroad between the same points is operating, as, for instance, Fargo, where the Milwaukee & St. Paul is operating. That is what I mean by that. Another of those points is Butte, where the Union Pacific is present. Another of those points is Spokane, where the Union Pacific is present.

Q. And Seattle and Portland?

A. Yes, there is competition there also.

Q. Now, do you mean to state that that percentage, 6.89 1112
percentage of the total interstate traffic, is controlled by rates that are the result of agreement by these competing lines?

A. No, sir; what I say is that they cannot be controlled by the Great Northern and Northern Pacific by their own arrangement, but in order to control rates they must bring in a third party who must be consulted and consent to the rates,—like the Milwaukee & St. Paul or the Union Pacific. That is what I mean. Do I make myself clear?

Q. Yes, I think so. Those are the rates that are mentioned in this Ex. 5? 1113

A. Yes, sir. No, those are not quite the same. The rates in Ex. 5 are those in the fourth paragraph, if you will read the next below. No, there must be an agreement not only between the Great Northern and the Northern Pacific and a third carrier reaching the same point to control rates, but the connecting line beyond must be brought in to consent to the through rates; then four classes of parties are necessary.

Q. Where are the rate sheets that come under that third paragraph?

A. I have not those here.

Q. As a matter of fact, doesn't Ex. 5 apply to both third 1114
and fourth?

A. It was not intended to; it was only intended to apply to the fourth, and there is a class of tariffs on the Great Northern road itself and on the Northern Pacific road going out to a number of those points.

Q. And on the St. Paul road and on the Union Pacific?

A. Yes, sir.

1115 Q. Where the rate is the result of agreement between those four or five lines?

A. Yes, sir, where, if the Great Northern or the Northern Pacific desired to raise the rate, they couldn't do it without securing a simultaneous *rise to the same extent by the other* competing carriers.

Q. Yes; the rates are the result of agreement and they won't change them without agreement.

A. Yes. Under paragraph four it is necessary to get the consent of the line beyond to the joint tariff, in addition to the local road that is competing directly.

1116 Q. Col. Clough, have you had anything to do with the rates since you went east?

A. Not directly, no, sir.

Q. Had anything to do with the traffic arrangements between the Great Northern and the Northern Pacific?

A. Absolutely nothing. My connection since I have been east has been nothing with the Great Northern. I have been a director and a member of the executive committee of the Northern Pacific, but the subject of rates and tariffs has never been mentioned in any of the meetings of the board or executive committee of the Northern Pacific since I have been a

1117 member.

Mr. Day. That is all, Colonel, and we withdraw our objection to that paper.

The Examiner. You withdraw your objections to Exs. 6 and 7?

Mr. Day. Yes. Your explanation regarding Ex. 6 applies to Ex. 7 also?

Witness. Yes, sir.

Mr. Day. The reporter will make a mark on these two classifications that are produced so we may subsequently put

1118 them in if we deem best. And, Col. Clough, will you file or submit to us the Western classification that was in force between January 1, 1900, and January 1, 1902?

Witness. I will do it if I can get it, and I think among the various roads around town I can get it.

Mr. Richards. That is all.

1119

RE-DIRECT EXAMINATION.

By Mr. Grover:

Q. Is there a provision in the constitution of the state of Minnesota subjecting stockholders to double liability for any indebtedness of the company?

A. There is. That is, in the state of Minnesota?

Q. The state of Minnesota.

A. Yes, sir.

Q. That is a material matter in the consideration of the organization of corporations under the general laws of the state? 1120

A. Yes, sir. That was another reason why we felt that the state of Minnesota was not a proper state to resort to for incorporation under the general law.

Q. What was the number of outstanding shareholders of the Northern Pacific Railway Company, in, say, August and September, 1901?

A. There were over 3,000; something like 3,600, to the best of my recollection. I will give it to you exactly. But it was between three and four thousand. 1121

Q. Was there any negotiation or discussion concerning the formation of the Northern Securities Company, or the purpose of its organization with any Northern Pacific shareholder except Mr. Morgan, outside of the Great Northern shareholders who likewise held Northern Pacific shares?

A. To the best of my knowledge there was not; I am sure there was none; and with Mr. Morgan only to the extent I have mentioned.

Q. That was a question whether he would turn in his shares?

A. Yes, sir; sell his shares and take his pay in the stock of 1122 the new company, or otherwise.

Q. Previous to the first day of May, 1901, did you know of any purpose on the part of Great Northern shareholders owning Northern Pacific shares to increase their holdings in Northern Pacific shares?

A. At what time was that?

1123 Q. Prior to the first of May, 1901.

A. I never heard the subject mentioned.

By Mr. Day:

Q. Colonel, just one other question that may be in there or may not. Your commodity rates or your tariff rates, say, to the Pacific and Pacific to the Atlantic apply by every line in the official classification territory?

A. Apply to all who are——

Q. —named on page 2 of this book?

A. To all who are consenting parties to this joint tariff.

1124 (From U. S. vs. No. Sec. Co., vol. 3, p. 895.)

Mr. Richards. In this connection, I desire to ask Col. Clough whether he can furnish us with the report made by Mr. Grover as to the result of his search for a Minnesota charter, prior to the organization of the Northern Securities Company?

Mr. Clough. Since the last examination, I have satisfied myself that the report referred to, made by Mr. Grover, was verbal.

Mr. Richards. Colonel, to whom was that verbal report made?

1125 Mr. Clough. I think both to Mr. Hill and myself.

Mr. Richards. Can you state the substance of it?

Mr. Clough. I stated it in my evidence.

New York City, November 18, 1902.

At 2 o'clock P. M. the hearing was resumed, all parties being represented.

W. P. CLOUGH, being first duly sworn, as a witness in behalf of the complainant, testified as follows, in answer to in-
1126 terrogatories propounded by Mr. Munn.

Q. It already appears in the record, Col. Clough, that you are one of the directors of the Northern Securities Company?

A. Yes, sir.

Q. And were such during the month of November, 1901?

A. Part of the month of November; the latter part. I think I became a director perhaps two or three days after the company was organized.

Q. The records show that you were present at a meeting 1127
of the directors of the Northern Securities Company on the 15th of November, 1901 (to which I have already called Mr. Nichols' attention), where the statement was made by the president of the Northern Securities Company as to his ability or the possibility of acquiring $37,023,000 of the common stock of the Northern Pacific, and $41,085,000 of the preferred stock. You were present at that meeting?

A. I was, yes, sir.

Q. Was there any discussion at that meeting as to the advisability of this purchase and the terms upon which it was 1128
to be made?

A. There was no extended discussion.

Q. Well, will you state what discussion took place?

A. If you will be kind enough to let me take those minutes, I will explain just what did occur. (Referring to a pamphlet.) This meeting was an adjourned meeting, held at half past two o'clock on the afternoon of the 15th, which, as I remember, was Friday. A little time before the hour for the meeting had arrived (perhaps half an hour or so) one of the partners of J. P. Morgan & Company (my recollection is that it was Mr. Steele) came to the Northern Securities Company's office 1129
and said that a negotiation which was pending at that time beween J. P. Morgan & Company and Messrs. Harriman and Pierce, for the purchase of their holdings in Northern Pacific preferred and common, he thought would very shortly come to a conclusion as to terms, that is, the precise terms upon which Harriman and Pierce would sell would be arrived at very shortly. And he said, at the same time, that probably before closing the contract, if one were entered into, Harriman and Pierce might, if the stock were turned over to the Securities Company, desire to see some action of the board, and suggested that some kind of action should be 1130
taken, and inquired about the meeting. I told him that there was to be a meeting that afternoon, but that likely there could not be another meeting on Saturday (which would be the following day) on account of the fact that a number of our directors did not come to their business on Saturday, and that a meeting could not be had until the fore part of the week after that day. Then it was suggested that as that was the case and this bargain might come to an early termination

1131 and it might be desired to close it up soon, some sort of action be taken at the meeting to be held that afternoon. And then a sketch was made of a minute entry for the meeting, beginning with the words, "The president stated," and ending with the resolution which closes the first paragraph of the 18th page of this printed volume of the minutes. But as the bargain had not yet been concluded, the figures showing either the amount of the stock or the price to be paid could not then be stated, but he thought they would be ascertained before the close of the meeting. So this preamble, commencing with the words, "The president stated," and the resolu-
1132 tion following, were prepared just as they are now, with the sums left blank, and the meeting assembled, and, after waiting a little while, no figures were present, and some of the directors being anxious to get away, I produced this preamble and resolution, and I read the resolution and explained it in a general way to the meeting. And after quite a general expression of opinion among the directors who were present, that a purchase of this stock was very desirable, the resolution, with the blanks in it, and the preamble, were adopted. Then we passed to other business. Just as the meeting was
1133 breaking up (the other business being finished), I think Mr. Perkins came in (who was a director). I think Mr. Perkins appeared for the first time near the close of this meeting, after most of the business had been done, and brought in figures showing the amount of preferred and common stock, respectively, that Harriman and Pierce had, and the price to be paid; showing the money and the amount of stock of the Northern Securities Company that was to be paid for it. I looked at it, and it was shown to Mr. Hill, and then it was perceived that the amount of Northern Pacific stock contained in the statement was appreciably less than the amount
1134 of stock which we had all the time supposed they owned. And we declined to close the trade; that is, the Securities Company declined to take the stock from Morgan & Company on that basis. The meeting then adjourned, with the whole matter left open. And as I understood, negotiations were then resumed between Morgan & Company and Harriman and Pierce, and were concluded some time between Friday afternoon and the following Monday morning (which was the 18th).

Then a basis was reached, which is expressed by the figures 1135
that now appear in this resolution. The preferred and common stock of the Northern Pacific were brought in and paid for, and the minutes were written up with these numbers inserted as they now appear here. The meeting for the purpose of acting upon this project again had been adjourned until the following Tuesday. It was found that the following Tuesday was the first day we could reasonably expect to get a quorum. So the following Tuesday the minutes of the meeting of the previous Friday, with the blanks filled as they now stand, were read and approved by the Board of Directors. 1136
That is the history of the resolution.

Q. Now, Colonel, that is the only official action taken by the Northern Securities Company for the acquisition of this stock?

A. Yes, sir. That is it, precisely.

Q. And no other authorization or ratification was given or made?

A. No, sir, none at all. When the minutes were read at the meeting of the 19th, and approved, with the resolution as it now appears of record, with the numbers filled in, the transaction had been closed; the Harriman and Pierce stocks 1137
had been delivered and paid for by the Northern Securities Company the previous day.

Q. There had been no meeting of the directors or executive committee taking any further action regarding this particular transaction, between the meeting of November 15th and the one of November 17th, that you refer to?

A. None whatever.

Q. November 18th, I guess it is?

A. 19th.

Q. November 19th?

A. Yes, sir. The board adjourned from Friday afternoon 1138
until the following Tuesday afternoon.

Q. The Northern Securities Company had already adopted resolutions fixing the basis on which it would exchange its stock for the Northern Pacific common, prior to this time, had it not?

A. The Northern Securities Company's board of directors had passed resolutions, which speak for themselves.

1139 Q. Yes, on November 13th.

A. I don't remember the date on which they were passed, but they are printed in full in those minutes, and if you will read them they will speak for themselves.

Q. Well, I call your attention now to the meeting of November 13th, 1901, wherein the following resolution appears: "Resolved, That the president be and he hereby is authorized, for and in behalf of this Company, to purchase any shares of the common capital stock of the Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, that shall be tendered
1140 to this Company at a price not exceeding $115 for each share of such capital stock of the par value of $100, such price to be payable in the fully paid up shares of the capital stock of this Company at par, the board of directors having adjudged and determined, and hereby adjudging and determining, that the value of such shares of the capital stock of the Northern Pacific Railway Company is at least $115 per share." That resolution was adopted at that time, was it?

A. Those minutes show correctly every resolution that was adopted by the board of directors of the Northern Securities
1141 Company during the period that they purport to cover.

Q. Well, now I have read you this portion of the minutes of the meeting of November 13th, 1901; and, in order to avoid putting in the record what is unnecessary, will you look it over and see if you can concede that that is correct?

A. The proceedings of the board, as I said before, are correctly stated in those minutes which you have in your hand.

Q. Now, in order that we may have no question about the resolution, Colonel, I will ask you to look at it, so that you may testify that that is correctly inserted in the record.

A. This paper that I hold in my hand, this pamphlet, ap-
1142 pears to be a copy of the minutes of the Northern Securities Company, during the period from November 13th, 1901, to November 29th, 1901, inclusive. I gave you that pamphlet, and those minutes are correct.

Q. All right. That is what I want to get at. Then the resolution which I have read as being adopted at the meeting of November 13th, 1901, by the board of directors of the

Northern Securities Company, is a resolution which was 1143
adopted by that board at that time?

A. Any resolution that you read from that pamphlet is correct and was adopted as it purports to state.

Q. Colonel, I want this fixed as being the resolution. Now, if you will, take the trouble to look it over and see if it is correct. (Handing the pamphlet to the witness).

A. That is a correct copy of this resolution.

Q. The total amount paid by the Northern Securities Company for the purchase of the $37,023,000 common and $41,085,000 preferred capital stock held by Mr. Harriman and Mr. 1144
Pierce, is about seven and three-quarters millions more than at the rate of $115 per share for the common stock and par for the preferred?

A. I have not computed it. I don't know.

Q. That is subject to computation. I have computed it, and as I make it, it is exactly $7,746,050. Was there any discussion at the meeting about the advisability of paying that additional amount for this stock?

A. I don't know that the range of the discussion attached itself especially to the price. The general terms of the purchase were considered by the board, and it was considered 1145
that the purchase at the price designated would be advantageous to the company.

Q. That is, the Northern Securities Company was very desirous of getting control of the so-called Harriman holdings in the Northern Pacific stock, isn't that correct?

A. It was willing to get control of them at the price mentioned in that resolution as finally recorded.

Q. That is, they were not only willing to do that, but they were desirous of getting possession of that stock, were they not?

A. Well, all I can say is that the board adopted a resolu- 1146
tion expressing its willingness to purchase the stock at those terms, and approving the purchase.

Q. Had there been any expression of a determination, or talk on the part of the Harriman interests to enjoin the retirement of this preferred stock and thus retain control of the Northern Pacific with the Union Pacific interests?

A. I had never heard any of them say so.

1147 Q. Well, you had heard of such claims or threatened efforts being made, had you not?

A. I don't think that I passed a word with them on the subject.

Q. No, I don't say that you passed a word. You had heard such discussions and references made, had you not?

A. I will tell you the source of my information, if you will wait a moment. I had never passed a word on the subject of the retirement of the Northern Pacific preferred stock, with Mr. Harriman or Mr. Pierce or any of their associates, so far as I remember. It was stated in the newspapers (and that
1148 was the source of my information) during the summer, at least, and perhaps early in the fall, that in the event of the Northern Pacific taking action to retire the preferred stock, it would be met with resistance by Harriman and associates. That was the extent of my information—what I saw in the papers.

Q. Now, Colonel, you said that at this meeting or shortly after the meeting, it was learned just the amount of holdings of the Harriman interests so-called?

A. My recollection is that it was just about as the meeting
1149 was breaking up. A number of the directors were anxious to get away.

Q. Now, is it not a fact that all of this stock had been transferred on the books of the Northern Pacific Railway Company, to Mr. Harriman and Mr. Pierce, prior to the annual meeting in October, 1901?

A. I have ascertained since this transaction, by looking at the stockholders' list of the last year's annual meeting of the Northern Pacific Railway Company, that a large amount (I have not computed the total), a very large amount of stock had been transferred to Harriman and Pierce some time
1150 along in the summer. But I never made any computation myself. I can get the precise amount, if you desire.

Q. I would like to have that, if you will bring it here.

A. Yes. I never made the computation. It was large, but I don't know what it was.

Q. Colonel, as I remember Mr. Hill's testimony, he states that he first learned of the actual holdings of the Harriman interests, so-called, when the stock was transferred prior to

the October annual meeting of the Northern Pacific Railway Company. 1151

A. I don't know about that, I am sure. A large amount was transferred to them and stood in their names, and, if you wish, I will, as I said, get the precise amount that was transferred.

Q. This block of stock is the only stock of the Northern Pacific Railway Company which was purchased by the Northern Securities Company in which any cash was paid, is it not?

A. No, sir. The Northern Securities Company bought upwards of $34,000,000 of Northern Pacific convertible bonds, and converted the whole of it into—— 1152

Q. That is a part of this sale?

A. No, sir. Converted it all into the common stock.

Q. That is some of the same stock that is referred to here, is it not?

A. No, sir, not at all.

Q. It is the amount of common stock that the holder of this $37,023,000 would be entitled to subscribe for under the retirement resolution, was it not?

A. The stock that I have just mentioned as having been obtained by the Northern Securities Company through the convertible bonds of the Northern Pacific Railway Company, did not exist until the first of January, 1902. 1153

Q. That is, the stock was not available until the certificates had been issued and the preferred stock retired; is that it?

A. It didn't come into existence under the terms of the resolution of the Northern Pacific board for the retirement of the preferred stock. The new common stock didn't come into existence until the first of January, and after the retirement of the preferred stock to an equal amount.

Q. This $34,000,000 that you speak of is the same $34,000,000 that Mr. Nichols testified about this morning? 1154

A. I heard Mr. Nichols' testimony to the effect that the Northern Securities Company had acquired from the Northern Pacific Railway Company direct $34,000,000 of the new common stock; and that is the same stock that I speak of now.

Q. And the right of the Northern Securities Company to

1155 obtain that new stock was acquired by the acquisition of this stock from the Harriman interests?

A. For the greater part of it, as explained in my previous testimony, which is in evidence in this case.

Q. All I wanted to do was to fix that as being a part of this same transaction.

A. Yes, sir. That is stated, I think, fully, in my previous testimony.

Q. Now, aside from this stock, or the rights which came from this stock, has the Northern Securities Company ever bought any other Northern Pacific stock and paid cash for it?

1156 A. Not in large amounts.

Q. In either large or small?

A. My recollection is that some fractions have been bought of old common stock.

Q. What do you mean by "fractions"?

A. What I mean is, small amounts; a few shares. But no large amounts have been purchased for cash, except the Harriman and Pierce stock, and the stock purchased in January directly from the Northern Pacific.

Q. You have already referred to that?

1157 A. Yes, sir.

Q. Are you personally familiar with the book entry transactions by which this stock was acquired, as Mr. Nichols testified this morning?

A. Yes, sir. I know exactly how it was acquired.

Q. You testified, Colonel, at your last examination in the Federal case, that you were requested by some one to make an examination of the laws of New Jersey and other states, preparatory to incorporating a holding company?

A. I don't remember making such a statement.

Q. Well, were you so requested?

1158 A. I don't know that I was requested, in form. I know I did do that at somebody's suggestion.

Q. At whose suggestion?

A. I can't remember. There were a number of gentlemen who were talking about the matter from time to time, but I don't remember who suggested it first.

Q. Was it not Mr. James J. Hill?

A. I can't remember whether it was Mr. [redacted]. Ken- 1159
nedy or Mr. James, or some of the oth[redacted]tlemen. I couldn't recollect now.

Q. Colonel, that was rather an important matter, and you were giving it close attention, as you have already testified?

A. That is right.

Q. And yet you mean to testify that you can't remember who suggested that you should do that work?

A. No, I can't remember, because I was talking from time to time with all of those gentlemen and——

Q. Who do you mean by "all of those gentlemen"? The men you have already testified to as Mr. Hill's associates in 1160
ownership of Great Northern stock?

A. More frequently the three gentlemen whom I have named; Mr. Hill, Mr. Kennedy and Mr. James. Mr. Thorne I talked with occasionally.

Q. But you think the suggestion came from either Mr. Kennedy or Mr. Hill?

A. Why, I don't know but that I may have done it voluntarily, without anybody's request. That is a matter that I didn't try to fix on my mind.

Q. Well, you didn't start in on an investigation of this mat- 1161
ter and an examination of the laws preparatory to forming the Northern Securities Company or some holding company, without a suggestion from somebody, did you?

A. The matter goes back, Mr. Munn, for so long a time——

Q. I understand that. I don't care to go into the ancient history of it. I want to confine ourselves to 1901.

A. Well, that is the basis of the explanation.

Q. You testified, as I remember it, in the Federal case, that just prior to the time Mr. Kennedy went to Europe he suggested this matter to you?

A. But I didn't testify that that was the beginning of the 1162
suggestions.

Q. No, you testified that that was when you first renewed this investigation or "thought" as you call it?

A. Well, I didn't know that I did. I didn't intend to be so understood, because it was pretty nearly a continuous matter—had been for four or five years.

1163 Q. Well, Colonel, you say that Mr. Grover was requested to make an examination of the territorial grants or charters in Minnesota, to see if a charter could there be found, and that the matter of the Northern Securities Company, or the formation of a holding company under the laws of New York and New Jersey, did not finally culminate until after he had made that examination. That is correct, is it?

A. Practically correct. So far as I am personally concerned (and I only speak for myself) I don't believe that I considered the question of the organization of a corporation
1164 under the laws of the State of New Jersey, until some time last spring. That is my recollection of it.

Q. Some time in the spring of 1901?

A. Yes, I think so.

Q. That is as I understood your testimony given before.

A. Yes. But the matter of the formation of such a corporation as I speak of had been pending for several years,——

Q. We have already had that; I don't care about that.

A. —and its beginnings are so far back that I can't tell whence suggestions came; it would be imposible at this time.

Q. I don't care about that. We are coming down to the
1165 modern affair now. Mr. Grover made this search, and, you testified, made a written report.

A. I don't think so. I didn't intend to. I think it was a verbal report.

Q. To whom was that report made?

A. I think Mr. Grover mentioned the subject to me verbally, and probably he mentioned it also to Mr. Hill.

Q. Do you know who requested him to make that search?

A. I don't remember. I can't remember what was the beginning of that.

Q. It appears of record here that Mr. Grover is the general
1166 counsel of the Great Northern Railway Company?

A. He is, yes, sir.

Q. And you say you think he made that report to you?

A. I don't think it was in the form of a report. I think it was a mere conversation.

Q. As a matter of fact, Colonel, did not Mr. Grover report that there was a territorial charter in Minnesota known as

the St. Peter Company charter, and was not that charter afterwards actually acquired? 1167

A. Mr. Grover reported at one time—I don't remember when it was, I am inclined to think it was a year or more ago, two years ago perhaps——

Q. Well, did not Mr. Grover make the report, during July, 1901, and did not the parties interested in the organization of this holding company—one or more of them—proceed to acquire that charter?

A. If you will allow me to explain, I can perhaps make the matter more——

Q. I would like an answer to that question, Col. Clough. 1168

A. Your time is so indefinite. What time do you mean.

Q. I said during the month of July, 1901, did not Mr. Grover report that he had found a charter, known as the St. Peter Company charter, in the State of Minnesota, which was an old territorial charter, and did not the parties in interest in organizing this holding company, afterwards acquire that charter?

A. I can answer no, with this explanation: that we had known about the St. Peter charter for some years, so Mr. Grover could not then have reported that he discovered it. 1169

Q. Well, did he not report on this St. Peter charter?

A. He expressed opinions at various times, of a greater or less degree of certainty in his own mind upon the subject of the terms and powers of the St. Peter charter, which we had known about for some time and knew that it was for sale.

Q. Did any person interested in the organization of the holding company acquire that charter after the spring of 1901?

A. I don't think so.

Q. When, if at all, was that charter acquired by anybody?

A. I don't know. 1170

Q. Did you not have that charter down here, Colonel, and discuss it with Mr. Grover and other parties in interest here, as to whether it was safe to proceed under that charter?

A. I don't think so, Mr. Munn, because we had been quite familiar with that for several years, and knew that the parties who controlled it wanted to sell it.

1171 **Q. Did not Mr. Hill and some of his associates acquire that charter of the St. Peter Company during the summer of 1901?**

A. I have no personal knowledge of that fact.

Q. Don't you know it to be a fact, regardless of personal knowledge?

A. If you will allow me to answer, Mr. Munn; I heard that somebody had purchased that charter; but it was not purchased by the Northern Securities Company.

Q. Well, the Northern Securities Company was not organized at that time?

1172 **A. It was not organized. It didn't exist and consequently it must have been some individual who bought it. Now, who that individual was, I don't know.**

Q. Don't you know that Mr. Hill and some of his associates acquired it?

A. No, I don't. I don't know who acquired it.

Q. Was that charter discussed by you with either Mr. Grover or Mr. Hill, or any other person interested in the formation of this holding company, during the summer of 1901?

A. Going back to my previous answer,—the subject of the organization of a holding company to take the stock of Mr.

1173 **Hill and a few of his associates, was very old.**

Q. Colonel, if you will pardon me——

A. Now, if you will kindly allow me to finish my answer——

Q. I know, but I don't care to get into that ancient history at all. I am trying to confine this examination to what took place in the spring and summer of 1901. I don't care what was said and done prior to that time. We have got down to where we are talking about the formation of a holding company, as you have said, which was renewed or revived during the spring of 1901. We will take the revival and let the rest

1174 **go. Now, I ask you whether or not you did discuss, with Mr. Grover and Mr. Hill, and some of Mr. Hill's associates who were desirous of forming this holding company, during the spring or summer of 1901, the advisability of adopting and using this St. Peter charter for that purpose?**

A. If you will allow me to answer by a little more extended statement than Yes or No: As late as the spring of 1901 the question of the adaptability of that charter for the

company that was contemplated to be formed for holding the stock of Mr. Hill and his associates, was considered, and I expressed my opinion about it, reaffirming what I had expressed before—that the powers of that company were not sufficiently clear for the purpose of making it the basis of holding a large amount of property. 1175

Q. Now, after the expression of this opinion by yourself, was not that charter actually acquired, Colonel, by Mr. Hill and some of his associates, during the summer of 1901?

A. I will have to answer that by saying I don't know.

Q. Well, was there any discussion between you and Mr. Hill, or some of Mr. Hill's associates who were desirous of forming this holding company, as to the advisability of finally using the St. Peter charter after it was purchased? 1176

A. I cannot state, for the reason that I have no knowledge as to the date when the purchase was made. But it was known for years, Mr. Munn, that it was purchaseable, if we wanted it, and thought it fit for our use, and it was considered carefully, and considered again in the spring, and considered by myself, and——

Q. Now, Mr. Morgan in his testimony——

A. Excuse me—if you will permit me to finish my statement? 1177

Q. Certainly.

A. I thought again, at last, as I had thought at first——

Q. When you say "at last," when do you mean?

A. In the spring or early summer of 1901.

Q. Yes.

A. —that the powers contained in that charter, or rather, the statement of the powers, was not sufficiently clear to make it the basis of a large financial corporation. Whether Mr. Hill had bought it before or bought it afterwards, I don't know. Whether he bought it at all I don't know. 1178

Q. Well, we will show that by somebody else. Now, Mr. Morgan in his testimony refers to this St. Peter charter. Did you discuss it with Mr. Morgan?

A. I don't think so. I don't think I ever mentioned the subject of the St. Peter or any other charter to Mr. Morgan. I am sure I never did.

1179 Q. You testified when you were previously on the stand, that the purpose of the search by Mr. Grover was to ascertain whether or not a charter could be acquired which was beyond legislative amendment in Minnesota?

A. Radical amendment.

Q. And that that was the reason of the delay for a month or two pending his investigation. Now, was he investigating any other charter aside from the St. Peter charter?

A. I don't know. I was not present with him at all times, but I assume he was looking over the old territorial statutes and charters.

1180 Q. Well, Colonel, all the charters have been known to lawyers like yourself, and those who have been in the state for a great many years engaged in corporate business,—all the charters which existed in Minnesota, which are known as territorial charters, antedating the constitution, were——

A. Were what?

Q. All those territorial charters have been well known to you and to all other lawyers in Minnesota engaged in corporate work, for many years?

A. I have known about some of them, but there were a 1181 great many special acts of incorporation passed prior to 1858; between 1849 (when the territory was organized) and 1858, there was a vast number of charters, and, so far as I am concerned, I must say that while I knew about a few of them, I have never known, and do not to this day know, concerning the details, or accurately, about more than half a dozen perhaps.

Q. Did Mr. Grover report on any other charter than the St. Peter Company's charter at the time he reported to you?

A. I don't know that his report was a formal report, except merely to state——

1182 Q. Well, did he talk about any other?

A. I don't remember.

Q. Did he talk about the St. Peter charter?

A. I think he did.

Q. Yes—I thought so.

A. I think he agreed with me, that the question of the powers as expressed in the act was quite vague.

Q. Now, what do you mean by that?

A. The powers? 1183

Q. Yes.

A. If I had the charter here I could show you.

Mr. Munn. Well, I will withdraw the question.

Q. Now, you have testified, also, that you did not conclude that you were unable to obtain any satisfactory territorial charter of Minnesota until some time in the early part of the fall?

A. Oh, I don't think I said so.

Q. Well, when did you and Mr. Grover and Mr. Hill, and the people who were engaged and interested in the investigation for this territorial charter, conclude that you could 1184 not find a territorial charter in Minnesota that was desirable?

A. I think I testified that it was along late in the spring or early in the summer. Some time in the spring or summer

Q. Then you began looking over the laws in New Jersey and other states?

A. I think we had begun that before.

Q. Now, Colonel, during the spring and summer of 1901 you say you were engaged in this investigation. Who were you talking with?

A. I talked with various gentlemen who had been old 1185 stockholders of the Northern Pacific Railway Company; Mr. Kennedy, Mr. James, Mr. Hill, Mr. Thorne, and perhaps others, as I met them.

Q. You mean the Great Northern, I suppose, and not the Northern Pacific?

A. I mean the Great Northern, yes.

Q. Mr. Kennedy was a very heavy stockholder in the Northern Pacific, of course?

A. He owned a considerable block of stock.

Q. He was absent in Europe from some time in the fore part of April until about the first of July, 1901, wasn't he? 1186

A. My recollection is that Mr. Kennedy sailed for Europe in the first days of April and got back some time in June.

Q. So you didn't talk with him regarding this during the spring, after the first of April, 1901?

A. After he sailed for Europe and until he returned, of course I didn't speak with him.

1187 Q. Col. Clough, I call your attention to certain testimony given by you in the federal case, as follows:

"Q. Col. Clough, how long before the actual formation of the Northern Securities Company was it that you did determine upon the New Jersey charter?

"A. It was a very few days. I don't think it could have been more than five or six days before the articles were filed. It was probably just about five or six days. There were two states, New York and New Jersey, with very similar legislation, and it was a question really between those two, which
1188 should be selected, and we couldn't make the selection without consulting a number of the gentlemen who were to be largely interested, who were around in various parts of the country and did not get back. That is what detained it."

Now, who do you mean by "we" there?

A. I mean the gentlemen interested, as I have stated, in the project of a holding company that had been on foot for so long a time.

Q. Do you mean Mr. Kennedy?

A. I mean Mr. Kennedy, Mr. James, Mr. Thorne, Mr. Hill and the other gentlemen.

1189 Q. Well, it had been determined, prior to this time, to take in the Northern Pacific stock, had it not, as well as the Great Northern?

A. It had been determined to take in the stock of those gentlemen who were interested in the formation of this company.

Q. As I remember Mr. Hill's testimony, he says it was decided to organize the Northern Securities Company prior to July 1st, 1901, and the charter was worked on during the summer of 1901, and finally agreed upon during the fall of 1901. That is as I remember his testimony.

1190 A. I think my testimony was to the same effect, only I think I placed the time when it was decided that that should be proceeded with at an early date, earlier than Mr. Hill did. My recollection is it began in April.

Q. Then the Northern Securities Company was decided upon prior to July 1st, 1901?

A. Yes.

Q. But the charter not really drafted in form?

A. The charter not drafted, nor the name determined upon. 1191

Q. That is, you had decided to organize a holding company in New Jersey, which should acquire the stock of the Great Northern and Northern Pacific Railway Companies——

A. Not a holding company in any particular place until——

Q. Well, a holding company?

A. A holding company.

Q. And you had decided upon New Jersey?

A. Not until very shortly before the articles were filed. That was one of the last things that was determined.

Q. Well, I think you testified that your mind was rolling between New Jersey and New York and New York and New 1192 Jersey in a mad frenzy for some time there.

A. So far as my own mind was concerned, for some weeks before the filing of the articles the matter of the state had settled down to a choice between New Jersey and New York.

Q. Now, Colonel, during these discussions which took place in the spring, summer and fall of 1901, which finally matured in the formation of the Northern Securities Company, was the question of the right of this company to hold the stock of the Northern Pacific and Great Northern discussed?

A. I don't believe it was discussed, any more than would 1193 involve the question of having a company with powers ample to hold and own securities and collect the revenues and distribute them.

Q. Was not one of the reasons why the St. Peter charter was abandoned, that you and your associates feared if you adopted a Minnesota charter you would place yourselves within the jurisdiction of Minnesota to enforce the state law?

A. No, sir.

Q. Was not that discussed?

A. I don't remember ever hearing that subject mentioned.

Q. Was not that discussed between you and either Mr. Hill, 1194 Mr. Kennedy or the representatives of J. P. Morgan & Co.— Mr. Steele, Mr. Bacon, or Mr. Perkins?

A. I am very sure it was not.

Q. Was it discussed with anybody who was interested in the organization of this holding company?

A. No, sir, I think not. I have no recollection of anything of that kind.

1195 Q. Well, you considered that question, of course?

A. No, sir, I didn't.

Q. You did not?

A. No, sir.

Q. Do you mean to say that this Northern Securities Company was organized without determining whether it could lawfully hold the stock of the Great Northern and Northern Pacific Railway Companies at the same time?

A. I don't mean to say that, no, sir.

Q. Well, there was some consideration or discussion of that question, wasn't there?

1196 A. There was no consideration or discussion of the question, so far as I have the slightest recollection or belief, that there would be any advantage of having a corporation formed in some other state than the State of Minnesota, if the laws of Minnesota would enable us to form a corporation with powers perfectly clear and indisputable.

Q. Well, was not one of the reasons why you wanted a territorial charter in Minnesota so that you could get back of the law of 1874 and 1881 in our state——

A. No, sir.

1197 Q. —prohibiting the consolidation of parallel lines?

A. No, sir. Absolutely no.

Q. You say it was not considered in connection with the obtaining of a charter. Now, was it considered in connection with the formation of a holding company anywhere, either New Jersey, New York, or anywhere else, by you gentlemen?

A. What considered?

Q. Was the question whether a holding company organized in New Jersey could hold the stock of the Great Northern and Northern Pacific at the same time, discussed by you gentlemen prior to the organization of the Northern Securities Com-

1198 pany?

A. I don't remember of its being discussed, no sir.

Q. Wasn't it considered?

A. I don't think it was considered to the extent of any discussion on the subject.

Q. Why, Colonel, perhaps you make a distinction without a difference. I consider your determination of that, and in

discussing it with Mr. Grover, a consideration of it. Now, 1199
did you talk it over with anybody else?

A. I don't think so. If you want to know my view of the matter——

Q. I will repeat the question. Did you consider it yourself?

A. I was just going to answer that question—if you will permit me. Speaking for myself, I never had the slightest doubt of the right of a corporation, even under the laws of the State of Minnesota, or the laws of New Jersey, or of any other state, that was not a railroad corporation, to acquire, hold and own the stocks of the Northern Pacific and Great Northern Railway Companies. And I have no recollection at 1200
all that there ever was any discussion over that subject. I think that was taken as granted.

Q. That is, they took your conclusion on that?

A. As granted, yes, sir. I think so. I think that was assumed by all the parties as granted.

Q. Now, if it was assumed, there must have been some reference made to it?

A. I have no recollection of any.

Q. Did Mr. Kennedy assume that?

A. I don't think it was ever spoken of; I have no recollec- 1201
tion of it.

Q. Not speaking of it at all?

A. No, I don't think so.

Q. You remember the statement made by Mr. Hill during the month of December, 1901, and published in the papers in the Northwest, shortly after the Governor had made his announcement as to the attitude he should adopt as Governor of that State, towards the Northern Securities Company?

A. I don't remember it, no.

Q. Do you remember Mr. Hill gave out a published statement over his signature, or gave out a statement over his sig- 1202
nature, which was published?

A. I don't remember.

Q. You don't remember that?

A. No.

Q. Now, Colonel, do I understand you to say that the organization of the Northern Securities Company was consummated and then stock of the Great Northern and Northern

1203 Pacific began to be turned in in exchange for its stock, without any consideration by you as the legal adviser of these gentlemen, or other legal advisers that they may have had, as to whether or not that company could lawfully hold this stock?

A. Well, I don't know that any transaction of that kind was contemplated. I never heard it was. The corporation that we were to organize it was intended should buy and pay for whatever it got.

Q. Well, it provides "it shall exchange its stock for the stock it acquires."

1204 A. That's what you say.

Q. Well, that is what the resolution adopted by the board of directors says—not my statement.

A. It says that it will buy it.

Q. It says it shall buy it and issue in exchange therefor its stock?

A. The resolution speaks for itself.

Q. Of course it does. If it does it is not necessary for us to discuss it.

A. I don't recollect that the resolution mentions it is to get

1205 anything for nothing.

Q. But the only stock that has in fact been purchased and paid for in cash by the Northern Securities Company is what you have already testified to—the so-called Harriman holdings?

A. No, sir. The $34,000,000 of Northern Pacific stock; that didn't exist until the first of January, 1902.

Q. That is a part of the same transaction, as I contend.

A. No, sir, it is not the same transaction.

Q. Well, that is a part of the same transaction?

A. No, sir, it is not a part of the same transaction.

1206 Q. With that exception it is all that has ever been purchased or acquired by the Northern Securities Company for which cash has been paid or for any portion of which cash has been paid, except for the very few number of shares you refer to?

A. The Northern Securities Company has invested something like $43,000,000 in cash in the purchase of Northern Pacific stock.

Q. In the manner you have testified, and no other? 1207

A. In the manner that I have testified, yes, sir.

Q. How did you and Mr. Nichols come to decide it was advisable to take some of this Great Northern stock in the name of trustees for the Northern Securities Company?

A. Why, I don't know that I can state anything upon that subject different from what Mr. Nichols said. I heard his evidence this morning. It was a matter that came up and was decided in almost a moment.

Q. And it had never been considered until December 11, 1901? 1208

A. I don't think it had ever been mentioned before. We had been carrying quite a large quantity of Northern Pacific in the same way, and then it was thought desirable that we should carry some Great Northern in a similar way, and Mr. Nichols and I, as he said this morning, decided it ourselves.

Q. Of course up to that time, the Northern Securities Company having acquired by actual transfer to it upwards of $49,000,000 of the Great Northern stock, had not a majority of that stock, there being one hundred and twenty-three odd millions of it?

A. That is a matter of computation. 1209

Q. The Northern Securities Company on December 11, 1901, had nearly all of the common stock of the Northern Pacific, which was then issued, had it not?

A. On December 11 it had about 120 millions out of 155 millions—something like that.

Q. And it has since acquired about two millions additional?

A. Yes, it has. It has about 153 millions out of 155 millions.

Q. One hundred and fifty-three millions out of 155 millions of the Northern Pacific stock?

A. Yes, sir. 1210

Q. So it had on December 11, 1901, of course nearly all of the stock of the Northern Pacific Railway Company?

A. It had about 120 millions.

Q. And over 49 millions of the stock of the Great Northern Railway Company?

A. I have given the exact figures.

Q. Now, has any additional stock of the Great Northern

1211 Railway Company been transferred into the name of the Northern Securities Company since December 11?

A. I think not.

Q. None whatever?

A. That is my recollection. And still I may be incorrect about that.

Q. And still there has been acquired by the Northern Securities upwards of 50 millions more of the Great Northern stock since that time?

A. I have given the precise figures. I don't carry them in my mind, but if you will refer to my testimony——

1212 Q. I couldn't find where you gave the amount.

A. If you will hand me the government printed volume I will give it to you exactly. On page 764, Mr. Munn, if you will look at that answer there are the exact figures.

Q. The exact figures there are $52,867,200 worth. Col. Clough, when you have spoken of 120 millions of Northern Pacific you meant $120,000,000 worth par value of course.

A. Par value, yes, sir.

Q. And you understood me as meaning the same thing when I have referred to upwards of 49 millions of the Great

1213 Northern?

A. Yes; I assumed you were speaking of the par of the stocks.

Q. Rather than the number of shares, because it is easier to speak of it in that way?

A. Yes, sir.

Q. Now, Col. Clough, you have already testified that during the summer of 1901 you were consulting with various parties in interest as to the charter of the Northern Securities Company; and you testified also that you didn't think its phraseology was changed very materially as a result of those con-

1214 sultations. That is substantially correct, is it not?

A. My recollection is that from the time the first draft was made, along in the summer, until the articles were filed, there was no material change made in the substance of the articles.

Q. Now, will you tell us with whom you talked that matter over during the summer of 1901? I mean the charter now.

A. Yes. I think I have stated that in my former testimony.

Q. I can't find the names. You said you talked it over with Mr. Steele?

A. No, I beg your pardon, I did not say so; I never dis- 1215
cussed the matter with Mr. Steele.

Q. Well, with whom did you discuss it? We will save time that way, probably.

A. I discussed it more or less with Mr. Hill, Mr. Kennedy, Mr. James and other gentlemen who had been stockholders in the Great Northern road for a long time and at whose instance the new company was to be organized. There were several of them; I don't remember all. These conversations were casual, as the gentlemen would be met. There was no formal conference; never was any.

Q. Well, the charter was finally adopted without any for- 1216
mal conference of any kind?

A. Without any formal conference of any kind; just as the gentlemen were met with.

Q. Now, as you would speak with Mr. Kennedy, did he approve of it and say that as far as he was concerned it was satisfactory?

A. Not in form, that I know of.

Q. Well, what did he say? What was this conference about?

A. I can't remember; but the substance of what he would 1217
say would be of course assenting and in approval, but I can't remember the exact language used in any case. There were so many conversations and they were so casual I didn't try to charge my mind with the words used and I cannot reproduce them.

Q. What changes were made after the first draft that was prepared by you, as you remember now?

A. I have no recollection of any material changes as far as the substance is concerned.

Q. Have you that first draft now?

A. I have not. As has been my custom always in such 1218
cases, when a revision has been made I destroy the previous draft so as to prevent confusion. So, as progress was made, I naturally destroyed the drafts from time to time, not supposing that the least importance would ever be attached to it.

Q. Did you make more than one draft of it?

1219 A. Yes; my recollection is that there were probably two or three drafts made of it.

Q. You did not realize then what was going to be its historical value?

A. Not at all. In order to save confusion between the drafts, when one draft was made, as the changes were slight the old ones were destroyed.

Q. Were the changes sufficiently marked so it was necessary to destroy the old draft?

A. That was one reason why it was important to destroy the old draft, because the changes were so slight; so as to
1220 prevent confusion.

Q. Now, as to those changes. Let us get at those changes. Name one or two of them, if you can.

A. I don't remember. They were mere matter of words to be used to express the ideas that are contained and expressed in this charter here. It was not a matter of substance. It was a matter of words to express clearly and unmistakably the purpose and powers of the company. The last points considered were the name of the company, and the amount of capital stock; I think those were left blank until about the
1221 last.

Q. Now, Colonel, the amount of stock finally fixed was four hundred millions. That, in round numbers, is just what it would take to acquire all of the stock of the Great Northern and of the Northern Pacific which had been issued, would it not?

A. On what basis?

Q. On the basis of $115 for the Northern Pacific and $180 for the Great Northern.

A. My recollection is, multiplying 155 millions of Northern Pacific stock by 115, and 125 millions by——

1222 Q. But there are only 123 millions of the Great Northern out.

A. Well, 123 millions, if you please (125 millions being authorized)—multiplying 123 millions by 180 would amount to something over four hundred millions of dollars.

Q. Multiplying 123 millions and 155 millions by 115 and 180 respectively, would give a few hundred thousand dollars less than four hundred millions?

A. I don't remember; I never multiplied it. 1223

Q. Well, it is a matter of computation.

A. Yes; I have never multiplied it.

Q. What is the actually issued capital stock of the Great Northern? You have given it, but I would like it for my own information now. It is less than 123 millions, is it not?

A. Of the Great Northern?

Q. Yes.

A. You have it exactly there.

Q. It is one hundred and twenty-two and something, I think.

A. 1,238,804 shares. 1224

Q. That is 122 millions?

A. That is 123 millions.

Q. $123,880,400?

A. $123,880,400 par value.

Q. How long had the negotiations for the acquisition of the Harriman holdings been pending prior to November 15, 1901?

A. I hadn't heard of them before that morning.

Q. That was the first knowledge you had of any effort to acquire that stock?

A. The first knowledge of any negotiations for the sale of 1225 the Harriman stock to Mr. Morgan, or anybody else.

Q. Col. Clough, you speak in your testimony, on pages 233 and 234 of the typewritten record, as follows: "The insistence by Mr. Morgan, after he got back in July, caused the crystallization and formation of the general idea that the corporation probably should be made—ought to be made—broad enough so that no stockholder of either the Northern Pacific or Great Northern could feel that he had been excluded from the advantage of an arrangement that the other shareholders had entered into with regard to their stock." 1226 Now, what arrangement do you refer to there in exchanging the stocks of these two corporations for the Northern Securities Company stock?

A. I think the answer speaks for itself fully.

Q. You have no other explanation to make of the word "advantage" than that?

A. Not at all.

1227 Q. You didn't consider any advantage accrued to the stockholders of the Great Northern and Northern Pacific, by reason of that exchange, in an official way?

A. Why, what I meant to say, and what I think I said, was if any stockholder of the Great Northern or Northern Pacific should think that it would be an advantage to him to sell his stock to the Securities Company on the same terms as other stockholders, the idea was that it would be fair and right to give him an opportunity. That is all I meant to say—leaving it wholly to himself to judge whether it would be an ad-
1228 vantage or not.

Q. You know of no advantage in a financial way that could accrue to stockholders of the Great Northern and Northern Pacific that you had in mind when you made this answer?

A. Why, that is a matter of opinion, strictly.

Q. I say you had no idea of any such financial advantage in mind?

A. Yes; any advantage. If any stockholder imagined that stock in the Securities Company would be more valuable than his Northern Pacific or Great Northern, that would be a matter of opinion, strictly, for every stockholder to decide for
1229 himself.

Q. Well, it didn't change the amount of assets either one of these corporations had, of course, changing that stock for the stock of the Northern Securities Company?

A. The Northern Securities Company merely purchased the stock of other companies, and the other companies remain the same. The Northern Pacific and the Great Northern remain just the same in every particular as if their stock had not been sold to the Securities Company.

Q. Then, was there any financial advantage to a stockholder of the Great Northern, or of the Northern Pacific in
1230 exchanging his stock for the Northern Securities Company stock?

A. Well, when you talk about "advantage" of course that is a very——

Q. I say "financial advantage."

A. That is what I am talking about. That is a very broad subject. What one person would consider of great financial advantage, another might consider of less. That was a mat-

ter that I didn't assume to express any opinion on whatever, 1231
either one way or the other.

Q. Did any of these associates of Mr. Hill, whom you have referred to as being desirous of having a holding company organized, express the same idea to you that Mr. Morgan did in his testimony when he said that after the May 9th experience he wanted to get that stock where it could not be again assailed and where the policy of the company would be fixed?

A. I don't think I ever heard that expression until Mr. Morgan used it on the stand. I heard his testimony. I think 1231
Mr. Morgan was merely expressing his own personal idea. It was the first time I had heard it.

Q. He speaks of having discussed it with Mr. Kennedy. Did Mr. Kennedy ever speak of it to you at all?

A. I don't think I ever heard Mr. Kennedy mention it; I have no recollection of it.

Q. If that is the case, Col. Clough, will you explain what you mean by this testimony which you have given, reading now from page 234 of the typewritten copy: "Q. Well, I am entirely right, then, in the suggestion that until Mr. Morgan made the suggestion that there ought to be some combina- 1233
tion, through a holding corporation, of the Northern Pacific and the Great Northern, that the only idea that was in the mind of Mr. Hill or his associates was to pool their stock together in the Great Northern in a security company. A. I never heard any suggestion for combining the Northern Pacific and the Great Northern; I have never heard it yet from any of the gentlemen in interest in the Northern Securities Company or the Northern Pacific or the Great Northern. I think as early as May, if you desire to know,—I think as early as May, I am sure as early as May, the idea as it first started of a holding corporation was enlarged to include the holdings 1234
of Northern Pacific as well as of Great Northern—the holdings of these gentlemen. I think that came in some time along about the first of May, or somewhere in the neighborhood. Q. Before or after the great panic in the New York Stock Exchange? A. Well, I am inclined to think about the same time."

A. I don't see that it needs any explanation.

1235 Q. Did you and your associates discuss, after the New York Exchange panic of May 9th, the advisability of having this holding company so as to get the stocks of these railway companies into it where they could not be assailed?

A. I don't remember about that.

Q. Lord Strathcona and Lord Mount Stephen were not here, of course, during the summer of 1901, were they?

A. No, sir.

Q. And, therefore, you or Mr. Kennedy didn't see them after Mr. Kennedy's return?

1236 A. Not here, no, sir.

Q. They were some of the parties interested in this matter?

A. They were interested.

Q. Who decided upon or authorized the circular letter issued by the Northern Securities Company on the date of November 22? I saw no reference to it in the meeting of the directors or stockholders.

A. I don't believe that was acted on by the board. It must have been arrived at, probably, by individual consultation among the directors.

Q. Is Mr. Hill the man who is responsible for that circular

1237 letter?

A. His name is signed to it.

Q. Yes, of course. But is he the man that suggested the letter, or did he in fact send out the letter without consultation with the board as such?

A. There was never any formal action of the board. My recollection is that it was determined on by individual consultation among the directors. That is my recollection.

Q. You told me yesterday that you had given the names of the voting or the proxy committee——

A. Yes, sir.

1238 Q. —for voting the stock of the Northern Pacific as well as of the Great Northern, at the meetings of those respective companies.

A. I have been unable to find them. I can give them to you from memory. For the Northern Pacific, Charles Steele, A. B. Hepburn, George F. Baker, Jr.; for the Great Northern, James N. Hill, E. T. Nichols and Edward Sawyer. You will find them in there somewhere.

Q. Did those gentlemen vote the Great Northern and 1239
Northern Pacific stock respectively, at the annual meetings this fall?

A. Mr. A. B. Hepburn, I am informed, voted the stock of the Northern Securities Company at the Northern Pacific meeting, and E. T. Nichols voted, I am also informed, the stock of the Great Northern at the Great Northern annual meeting. I didn't attend either meeting.

Q. That is the same E. T. Nichols who is secretary of the Northern Securities Company as well as of the Great Northern Railway Company? 1240

A. Yes, sir.

Q. What is the business of the gentleman, Mr. Hepburn, who voted the stock of the Northern Pacific?

A. He is vice-president of the Chase National Bank.

Q. And a stockholder of the Northern Securities Company?

A. I couldn't answer that without consulting the records.

Q. Well, is he interested in the Northern Securities Company?

A. I can't answer that without consulting the records to ascertain whether he is a stockholder. I couldn't say.

Q. Is he a partner of or an associate in business with any 1241
of the directors of the Northern Securities Company?

A. No, sir; he is the vice-president of the Chase National Bank.

Q. Who is the president of that bank?

A. Henry W. Cannon.

Q. Mr. Cannon is one of the directors of the Northern Securities Company?

A. No, sir.

Q. He is a large stockholder?

A. I couldn't answer that without consulting the record, but my impression is that Mr. Cannon is a stockholder. 1242

Q. Are any of the directors of the Northern Securities Company officers of the Chase National Bank?

A. No, sir. My recollection is that Mr. Hill is a director in that bank, but I would not speak positively about that. That is purely recollection.

Q. Is he not only a director, but an officer of the bank?

A. No, sir.

1243 Q. Vice-president?

A. No, sir, not at all. He may be a director or he may not. My impression is he is a director.

Q. Now, the Northern Securities Company has received the dividends on the Great Northern stock which is held in its own name, as well as the stock held in the name of trustees, has it not?

A. Oh, yes; I have stated that before in my evidence. The Northern Securities Company has received either directly or indirectly the dividends on all Great Northern and Northern Pacific stock which it has paid for either in cash or by its own
1244 shares.

Q. Col. Clough, Mr. Hill testified, in effect, that he had discussed with Mr. Grover, and possibly with some people here in New York who were interested in the formation of this holding company, that if it was necessary to do so they would adjourn the annual meeting of the Northern Pacific Railway Company, which was to take place in October, 1901, beyond the time the preferred stock was to be retired, so as to prevent any interference by any new board that might be elected, so as to prevent any interference with that plan by
1245 any new board that might be elected by the Harriman holdings. Did he discuss that with you?

A. I don't recollect. That was purely a Northern Pacific question. I was not on the Northern Pacific board at that time, and was not a Northern Pacific stockholder.

Q. I say, did Mr. Hill discuss that question with you?

A. I don't recollect.

Q. What?

A. I have no recollection of it. He may have done so, but if he did, it has passed out of my mind.

1246 CROSS-EXAMINATION.

By Mr. Young:

Q. Colonel, in reference to this postponement of the October meeting for fear that the Harriman party might choose a board of directors that was opposed to retiring the preferred stock, isn't it the fact that it had been agreed that Mr. Morgan should name the directors at that meeting and that he held the proxies of the Harriman party for that purpose?

A. I have learned so from hearing and reading the testi- 1247
mony that has been given in the various legal proceedings against the Securities Company. I had no personal knowledge of it at the time.

Q. You were asked whether you heard, in the summer of 1901, of any probable attempt by the Harriman party to enjoin the retirement of the preferred stock, and I think you answered that you had seen something of the kind in the newspapers?

A. Yes, sir.

Q. Did you think at that time that any such attempt, if 1248
made, would have any chance of success?

A. I did not.

Q. Such attempts have been made, I believe, since, haven't they?

A. I believe they have, yes, sir.

Q. With the same want of success that you anticipated?

A. It came out as I imagined it would if there were a conflict.

Q. But those attempts were not made by Mr. Harriman or his associates, I believe; I think by a gentleman by the name of Peter Power, who was the plaintiff. 1249

A. I believe Mr. Power was a plaintiff in one of the suits; yes, sir.

Q. In reference to the stock in the Great Northern Company which was purchased by the Securities Company but the title held in the names of other persons, I understood Mr. Nichols to testify this morning that that was to provide for the case of the Northern Securities Company desiring to use that stock as collateral?

A. Or similar purposes, yes, sir.

Q. Similar purposes.

A. To use it for financial purposes. 1250

Q. Say whether or not it is customary among large concerns here in New York, among bankers and banks holding stock which they think they may desire to use for financial purposes, to hold that stock in names other than their own.

A. It is very generally the practice.

Q. The idea being, I suppose, that in the case of making a loan it won't be a publication to the whole community that the persons who own that stock are large borrowers?

1251 A. Yes, sir.

Mr. Munn. I understand we have a right to interpose our objections when we are through.

The Witness. It is for the purpose of keeping the financial transactions of the owners of the stock confidential; that is the purpose of it.

Q. Mr. Munn stated with reference to the purchase of the Harriman and Pierce stock that taking the price paid for it in stock and cash, if the common stock bought of those parties were taken at 115 and the preferred stock at par, then the total of that would be some seven million dollars less than
1252 the $91,000,000 paid. Now, I want to ask you, and I think it is in evidence here, that that common stock which you bought had attached to it the right to subscribe at par for 15/16 of the amount in certificates convertible to new common stock.

A. I did have that right attached.

Q. And I want to ask you whether that right which was attached to the common stock which you so purchased, was considered as a right or value and was taken into account in fixing the price which you paid for that common stock?

A. It was considered a valuable right and, as I understand
1253 it, was considered as one of the elements of value that would be acquired by the Securities Company for the price that was named in the resolutions. But the price was a lump sum, and how it was arrived at I never knew and never have been able to ascertain.

Q. That is, a lump sum, but the elements of value, the things of value which you purchased were, first, the common stock of 34 millions; secondly, the preferred stock for which you would have a right to get par; and, thirdly, the right attached to the common stock of getting 15/16 of the new common stock at par?

1254 A. Yes, sir, that was included. That was stated in my testimony, previously.

RE-DIRECT EXAMINATION.

By Mr. Munn:

Q. What earthly value to the Northern Securities Company could that right be if it owned the stock of the Northern

Pacific,—to issue its own stock on the basis of 115 for what 1255
it already owned in the Northern Pacific?

A. I don't understand your question.

[illegible] question was read by the reporter.

The Witness. I can't understand the question. It's too deep for me.

Mr. Munn. Well, I thought so. I will see if I can make it more simple.

The Witness. Very well.

Q. The Northern Securities Company on January 1st, you say, owned substantially all of the capital stock of the North- 1256
ern Pacific Railway Company?

A. State that again, please.

Q. The Northern Securities Company on and prior to January 1st, 1902, owned substantially all of the Northern Pacific stock?

A. Oh, no.

Q. It owned about 120 millions of it?

A. Oh, no. No, sir, that's a mistake.

Q. Well, you so testified, Col. Clough.

A. No, sir.

Q. I am speaking of your testimony. 1257

A. I said it owned now over 150 millions. After its acquisitions of the additional stock since acquired, including the 34 millions, had been completed. But, on the morning of the 1st of January (if you will allow me to explain) the Northern Securities Company owned only about 120 millions.

Q. Perhaps we can save time, Colonel. I will go back and we will eliminate that.

A. I will explain the whole business if you will only give me a chance, so you will understand it.

Q. Your explanations are fascile always.

A. Yes. 1258

Q. Mr. Morgan and his associates and Mr. Harriman and his associates owned substantially all the common stock of the Northern Pacific Railway Company, on November 1, 1901; is that correct?

A. I don't know who you mean by the associates of Mr. Morgan.

1259 Q. Well, as they have been referred to in this testimony. I mean Mr. Hill and Mr. Kennedy.

A. I beg your pardon. They have never been correctly referred to as Mr. Morgan's associates.

Q. Well, they have been frequently referred to as his associates.

A. They have been by counsel, but not by witnesses.

Q. Mr. Hill refers to them and Mr. Morgan refers to them.

A. I beg your pardon; I have never heard it.

Q. They have been described as two sets of men—Mr. Hill and his associates and Mr. Morgan and his associates. Mr.
1260 Hill and his associates owning or, rather, controlling the policy and management of the Great Northern Railway Company, and Mr. Morgan and his associates controlling the policy of the Northern Pacific, some of the same men being in each association.

A. If you will kindly permit me, Mr. Munn, in just a few minutes I can give the figures of how things stood on the morning of the 1st of January and how they stood on the evening of the 1st of January, because they were very different.

1261 Q. Well, I know they were, of course. They had been increased by 75 millions—the common stock had—on the first of January, of course.

A. Yes, sir.

Q. But before that time, when the Union Pacific interests were acquired by the Northern Securities Company, had not the Northern Securities Company then actually acquired nearly all of the common stock of the Northern Pacific Railway Company?

A. That is another question. They had acquired nearly all of the common stock, but there were 75 millions of preferred
1262 stock of which it owned only 41 millions.

Q. It had acquired all excepting a very few shares of the common stock, on the acquisition of the Harriman interests, had it not?

A. I think it had acquired in the neighborhood of between seventy-eight and seventy-nine millions out of eighty millions of the common stock, by the first of January, and forty-one millions of the preferred stock. So that on the morning of

the first of January the holdings of the Northern Securities 1263
Company in both preferred and common amounted to practically 120 millions of dollars. On the first of January the 75 millions of the preferred stock were replaced by 75 millions of the common stock, of which the Northern Securities Company bought 34 millions.

Q. Through the convertible certificates?

A. Yes, sir, converted the certificates into stock.

Q. When the preferred stock was retired by the convertible certificates payable on or before seven years, the instant that that was done, the Northern Securities Company owned 1264
nearly 79/80 of the Northern Pacific Railway Company through its common stock. Is that correct?

A. After the preferred stock had been retired on the first of January and a new common stock had been issued to take up the convertible bonds, then the holdings of the Northern Securities Company were increased so that they amounted to about 150 millions out of about 155 millions of dollars.

Q. We have had that three or four times, but I want this, Col. Clough: When the Northern Pacific preferred stock was actually retired by corporate action and the convertible certificates issued, and before the new common stock was issued, 1265
at that instant the Northern Securities Company owned 79/80 of the Northern Pacific Railway, didn't it?

A. No, sir.

Q. Why not? Subject to an indebtedness of those certificates?

A. No, sir, it didn't own it until the preferred stock had been retired and the new common stock had been issued. When, at the close of the first of January, that process had been completed, the Northern Securities Company had bought the 34 millions of dollars additional of the new common stock, then it held about 112 millions of dollars. But, on the morn- 1266
ing of that day it held 78 millions of common and 41 millions of preferred. But it increased its holdings of common stock during the day 34 millions, and decreased its holdings of preferred about 41 millions.

Q. The preferred stock was retired by a convertible certificate or bond, as you call it (sometimes one and sometimes the other)?

1267 A. For cash at par.

Q. But those certificates——

A. The bonds or certificates were sold for cash at par and the money was used.

Q. To pay the preferred stock?

A. To pay off the preferred stock. Then, as that was done, as the preferred stock was retired for cash, the new common stock was issued. But only as the preferred stock was retired. No new common stock was acquired by exchange for preferred stock, at all.

1268 Q. That is trying to stand in your own boots and pull yourselves up by the straps, as I view it.

A. Well, that was the process.

Q. But what I am getting at is this: when those certificates were issued and the cash received for them, there was an obligation created on the part of the Northern Pacific and the preferred stock retired, wasn't it?

A. The preferred stock was not retired until it was actually paid off or the money deposited.

Q. All right, you got the cash on those certificates, you say. The resolutions for the retirement of the preferred stock pro-

1269 vided it should be retired as and of January 1st.

A. The capital stock of the Northern Pacific Company was fixed at 155 million dollars, and it was deemed impracticable to increase or diminish the 155 million of dollars, so the new common stock was only issued as the preferred stock was redeemed and paid off.

Q. Well, I understood all that. But, Col. Clough, when you retired the preferred stock you say it was done for cash?

A. Yes, sir, it was done for cash and paid for.

Q. When you got the cash for those convertible certificates and paid for the preferred stock, it was retired of course.

1270 Mr. Young. Who do you mean by "you?"

Mr. Munn. I mean the Northern Pacific.

The Witness. When the Northern Pacific got the cash?

Q. Is that correct?

A. I will tell you if you will permit me.

Q. You have told us four or five times how it was done.

A. Then, I decline to answer again if I have answered four or five times.

Q. I ask you if, when the Northern Pacific issued its certifi- 1271
cates of indebtedness and received cash therefor, it had incurred an obligation. With that cash it took the preferred stock, didn't it?

A. Of course. It took it up.

Q. All right. At that instant the Northern Securities Company owned 79/80 of the Northern Pacific Railway Company, didn't it—the instant that preferred stock was retired with the cash obtained upon these certificates.

A. It was retired on the first day of January and the new stock issued immediately.

Q. But between the issuance of the new stock and the re- 1272
tirement of the preferred stock with this cash received from the convertible certificates, that instant the Northern Securities Company owned 79/80 of the Northern Pacific Railway Company, didn't it?

A. That's what you say. I don't say so.

Q. Well, isn't that true?

A. No, sir. It is not correct.

Q. All right. We will take the figures for it.

A. It acquired 34 millions of new stock, that had never existed, on that day; after that was issued we got it.

1273

W. P. CLOUGH.

Subscribed and sworn to before me this 25th day of November, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

The further taking of testimony in this case was adjourned until the afternoon of Wednesday, November 19th, 1902, at 2 o'clock.

1274

Postoffice Building,
City of New York, November 19th, 1902.

The case was called for hearing at 2 o'clock p. m., pursuant to adjournment.

All parties were present.

Mr. Munn. Mr. Examiner, one of the witnesses we desired to examine to-day is unable to be present, and certain record information which is being prepared is not ready to be of-

1275 fered at this time; therefore we have no testimony to submit. We desire to examine Mr. Kennedy to some extent tomorrow, also one or two other witnesses, and we ask that an adjournment be taken until that time.

The hearing was thereupon adjourned until the afternoon of Thursday, November 20th, 1902, at 2 o'clock.

New York City, November 20, 1902.

1276 At 2 o'clock p. m., November 20, 1902, the hearing was resumed, pursuant to adjournment, all parties being represented.

W. P. CLOUGH was recalled in behalf of the complainant, and testified as follows:

Examined by Mr. Munn:

Q. Col. Clough, have you ascertained the amount of Great Northern stock which was voted at the annual meeting held a short time ago?

1277 A. Since I was on the stand before, I have ascertained it by examining the minutes of the Great Northern Railway Company, and also by inquiry from the proxy who was present and voted the stock.

Q. How much stock which was owned by the Northern Securities Company was voted at that meeting?

A. You have it on the paper I gave you.

Q. 458,017 shares is the amount on here.

A. Yes, that is right, 458,017 shares.

Q. That is, all that stock was held in the name of various trustees referred to by Mr. Nichols?

1278 A. Various individuals in whose names stock that had been bought by the Northern Securities Company and paid for was being carried, as I explained in my previous testimony.

Q. That is, carried in the name of trustees?

A. Yes.

Q. Was any of the Northern Securities Company's stock standing in its own name, voted at that meeting?

A. No, sir.

Q. What was the total amount of stock voted at that meeting? 1279

A. The total amount of stock voted was 650,771 shares, making 192,754 shares voted by holders other than the Northern Securities Company or anybody representing it.

Q. Now, were those gentlemen present in person or by proxy?

A. That was practically all by proxy.

Q. Who held those proxies?

A. I would like to look that up before answering.

Q. Will you ascertain to whom it ran, and insert it in your testimony? 1280

A. Yes. I had an impression, but I may be wrong. I will ascertain and tell you. I know that E. T. Nichols was one of them, but the others I don't remember.

Q. Have you learned the names of the individuals in whose names the stock is held for the Northern Securities Company, other than that standing in its own name?

A. Yes, sir; they are on this paper.

Q. Will you kindly give them?

A. 1281

H. H. Bourke	100,000
H. E. Hull	100,000
William H. Bruel	100,000
M. R. Brown	11,514
E. Mayglothling	75,399
M. L. Zabriskie	635
Chas. A. Pattee	70,469
Total	458,017
Total votes cast	650,771
	192,754

Q. You have already testified that the Northern Pacific stock held or owned by the Northern Securities Company, was voted at the annual meeting of the Northern Pacific Railway Company, by proxy? 1282

A. Yes, sir, I have astertained that to be the fact.

Q. I call your attention to the minutes of the directors' meeting of the Northern Securities Company, of November

1283 14, 1901, and ask you if the resolution at the bottom of page 9 and running over two lines on page 10, was adopted at that meeting.

A. I was not a member of the board of directors of the Securities Company on November 14, 1901, and was not present at that meeting, but I have no doubt whatever that the minutes of the meeting as printed in this pamphlet which you show me, are correct.

Q. The only directors at that time were the three incorporators?

1284 A. Yes, sir, the board of directors. The members of the board were increased at that meeting, as you will observe.

Q. Yes, but after the adoption of this resolution.

A. Yes, sir.

Q. Now, I will read this resolution into the record, if you will kindly follow me to see if I read it correctly: "Resolved, That the president be, and hereby he is, authorized, for and in behalf of this company, to purchase any shares of the preferred capital stock of the Great Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota, that shall be tendered to this company at

1285 a price not exceeding $180 for each share of such capital stock of the par value of $100, such price to be payable in the fully paid up shares of the capital stock of this company at par, the board of directors having adjudged and determined, and hereby adjudging and determining, that the value of such shares of the capital stock of the Great Northern Railway Company is at least $180 per share.

"Resolved, That the proper officers of the company be, and hereby they are, authorized and directed from time to time to make, execute and deliver proper certificates for the fully paid up shares of the capital stock of this company, in pay-

1286 ment for any stock of the Great Northern Railway Company acquired pursuant to the foregoing resolution, at the price therein stated."

Up to this time, and at the time these resolutions were adopted, the directors of the Northern Securities Company consisted of George F. Baker, Jr., Abram M. Hyatt, and Richard Trimble?

A. Yes, sir. 1287

Q. And at this same meeting, following the adoption of these resolutions, the board was increased to consist as it stands at the present time?

A. That is, it was increased to consist of 15 directors.

Q. Yes.

A. That is my recollection, that it was at the same meeting. I will look in a moment.

Q. Yes, it is on the next pages—10 and 11.

A. That is right. It was increased to 15 at that meeting.

Q. And subsequent to that, the present board of directors was elected as they appear in the record already made up? 1288

A. They were elected at a subsequent meeting,—not at that meeting, but at a meeting held on November 14th.

Q. And at that meeting the three directors who had been acting up to that time, tendered their resignations in order, and the vacancies were filled by some of these men who now compose the present board?

A. Yes, sir.

Q. I think you have already testified, Col. Clough, that there was no Great Northern stock acquired by the Northern Securities Company for which it has paid cash, and that all the Great Northern stock has been exchanged? 1289

A. No, I wasn't asked that question before.

Q. Well, that is the fact, is it not?

A. In a general way, that is correct; but I am not willing to state that no small fractions of Great Northern stock may not have been acquired for cash. I have forgotten. I think some has been, but no considerable amount.

No cross-examination.

W. P. CLOUGH.

Subscribed and sworn to before me this 25th day of November, 1902, at the City of New York. 1290

FREDERICK G. INGERSOLL,
Special Examiner.

1291

City of New York, November 18, 1902.

The hearing was resumed in Room 70, Postoffice Building, at 11 o'clock a. m.

All parties were present.

E. T. NICHOLS, sworn as a witness on behalf of the complainant, testified as follows:

DIRECT EXAMINATION.

1292

By Mr. Munn:

Q. Your name is E. T. Nichols?

A. E. T. Nichols.

Q. You are the secretary and treasurer of the Northern Securities Company, a New Jersey corporation?

A. I am.

Q. And you have held that position since the organization of the company?

A. Yes, sir.

1293 Q. As treasurer of that company, I presume you are familiar with its financial transactions during the months of November and December of 1901, and January and February of 1902?

A. Yes, I am.

Q. Can you state from memory the amount of cash received by the Northern Securities Company from any source during the months of November and December of 1901?

A. I should say about ten million dollars.

Q. Do you remember from what source that cash came?

A. I borrowed it.

1294 Q. Col. Clough has furnished me a statement here upon which appears the following: "Sales of Northern Securities Company to incorporators, $30,000."

A. Yes.

Q. That is a part?

A. That was a part of it.

Q. Who were the incorporators of that company, do you know?

A. Abram M. Hyatt, Richard Trimble, and George F. Ba- 1295
ker, Jr.

Q. Who is Abram M. Hyatt, do you know? Where does he reside, and what is his business?

A. He is vice-president of the New York Security and Trust Company, I believe.

Q. And Mr. Trimble?

A. He is secretary of the United States Steel Corporation.

Q. Do you know where he is employed?

A. Mr. Trimble?

Q. Trimble, yes. 1296

A. I presume at the office of the United States Steel Corporation.

Q. Do you know of your own knowledge, Mr. Nichols?

A. I have seen him there, yes.

Q. Do you know that he is employed there or employed in the office of J. P. Morgan & Co.?

A. I have no knowledge beyond the fact that he is reputed to be the treasurer or secretary of the United States Steel Corporation, and I have met him in that office.

Q. And who is George F. Baker, Jr., and where is he employed? 1297

A. He is an officer of the First National Bank of New York.

Q. Is he a son of George F. Baker, one of the present directors of the Northern Securities Company?

A. He is.

Q. I notice the next item in the statement furnished by Mr. Clough is as follows: "Proceeds sale of Northern Pacific preferred stock, $41,085,000." That is not cash received by the Northern Securities Company, is it?

A. It was.

Q. Did they receive cash? 1298

A. They received cash.

Q. From whom did they receive that cash?

A. From the Northern Pacific Railway Company.

Q. It is disclosed in this record already that they received the so-called convertible certificates of the Northern Pacific Railway Company for the amount of $41,085,000. Is that the same item?

1299 A. They did not receive that amount of convertible certificates.

Q. Did they receive convertible certificates from the Northern Pacific Railway Company?

A. They did.

Q. To what amount?

A. Thirty-four millions, seven hundred and odd thousand dollars.

Q. Is that a part of this same item of $41,085,000?

A. No. The $41,085,000 was a cash item. I have just stated
1300 that that was a cash item, cash received.

Q. Now, what did the Northern Securities Company receive that cash for?

A. For Northern Pacific preferred stock.

Q. Was that a part of the preferred stock acquired from the Harriman interests, so-called?

A. I don't know from whom it was acquired; it came to my office through J. P. Morgan & Co.

Q. The record of the official proceedings of the directors of the Northern Securities Company shows that the Northern Securities Company acquired, on November 15, 1901, or very
1301 shortly thereafter, $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company. Is that a part of the same $41,085,000 referred to in this statement regarding which I have already asked you?

A. We bought $41,085,000 of the Northern Pacific preferred stock in November.

Q. Did the Northern Securities Company have any other preferred stock of the Northern Pacific Railway Company aside from this one amount of $41,085,000?

A. No.

Q. When the Northern Securities Company received this
1302 cash, $41,085,000, from the Northern Pacific, did it surrender this preferred stock?

A. It did.

Q. Do you remember the date of the payment of that cash?

A. Which cash are you referring to now?

Q. This $41,085,000.

Mr. Young. You mean for the preferred stock?

Mr. Munn. Yes.

A. I couldn't state the date, positively. I think it was on 1303
the 1st of January, 1902.

Q. You received the cash on the 1st of January, 1902?

A. It is about that date; I can't state positively the day.

Q. Was that in redemption for the thirty-four millions of convertible certificates in part?

A. It was not in redemption at all. I just stated to you that I sold the preferred stock of the Northern Pacific Railway Company.

Q. You have also stated that you used thirty-four millions of that as a basis for subscribing for the convertible certifi- 1304
cates?

Mr. Young. That is objected to. He has not so stated.

Mr. Munn. I so understood it; I may be wrong. I will withdraw that question and put another.

Q. Did the Northern Securities Company use a portion of this $41,085,000 of preferred stock for subscription purposes to the Northern Pacific convertible certificates?

A. No, sir.

Q. Did the Northern Securities Company pay cash for those convertible certificates when obtained?

A. Yes. 1305

Q. And was that a part of the cash received from this preferred stock?

A. I put the cash that I received in the bank and I drew my check for thirty-four millions on the same bank.

Q. Then, as I understand it, the Northern Securities Company obtained from J. P. Morgan & Company $41,085,000 of the preferred stock of the Northern Pacific Railway Company?

A. We purchased that from them, yes.

Q. And did it issue in payment therefor its own capital 1306
stock?

A. Partly.

Q. Did it pay any cash besides?

A. Yes.

Q. How much?

A. The purchase of that preferred stock was part of a transaction. We purchased some stock, preferred and common, and paid for it partly in our own stock and partly in cash.

1307 Q. Did you not know at that time, and do you not know now, that that stock was a part of the stock owned by the Harriman interests, so-called?

A. Of my own knowledge?

Q. I don't care where you get the knowledge from. Don't you know it?

A. I don't know that I quite understand your question, Mr. Munn.

Q. I say, don't you know that this stock which was acquired at that time was a part of the so-called Harriman interests holding in the Northern Pacific?

1308 A. I presume it was.

Q. Mr. Steele has already testified that his firm, J. P. Morgan & Co., acted as mere bankers in acquiring this for the Northern Securities Company from the Harriman interests?

A. I have not read his testimony.

Q. Well, is that the fact?

A. What,—that they acted as bankers?

Q. Bankers or agents.

A. They did not act as agents for me; I was simply secretary of the company.

1309 Q. Well, you are secretary of the Northern Securities Company. I am talking of the Northern Securities Company all the time. I simply assume you are here in an official capacity.

A. They certainly did not act as agents for me.

Q. I don't say, acted as agents for you; I say for the Northern Securities Company?

A. Not that I know of.

Q. Did you conduct this transaction for the Northern Securities Company?

A. No, I did not.

Q. Do you know who did?

1310 A. No.

Q. Were you consulted about it at all?

A. I was not.

Q. At the time this stock was acquired, there was $9,360,000 paid in cash, was there not?

A. No.

Q. How much was paid in cash?

A. About eight million, nine hundred and odd thousand dollars.

Q. Did the Northern Securities Company have that cash 1311
on hand at the time this transaction took place?

A. It did.

Q. From what source had it [illegible]ived it?

A. They borrowed it.

Q. From whom had they borrowed it?

A. Borrowed a portion of it from J. P. Morgan & Company, and part of it I myself loaned the company.

Q. How much did you loan the company, individually?

A. $360,000.

Q. Did you have that money on deposit in the name of the 1312
Securities Company at the time it was paid?

A. I did.

Q. With J. P. Morgan & Company?

A. With J. P. Morgan & Co.

Q. That is you had arranged a loan of $9,000,000 with J. P. Morgan & Company and checked against that amount?

A. Checked against that amount.

Q. So that the entire amount of cash received by the Northern Securities Company during the time that I have already referred to, was the $30,000 received from the incorporators for stock purchased by them, the proceeds received from the 1313
sale of the Northern Pacific preferred stock, of $41,085,000, and the money borrowed, amounting to $9,360,000? Is that correct?

A. I think that covers all that we received at that time, yes.

Q. What?

A. I believe that that covers all we received at that time.

Q. Will you kindly give me the exact amount of cash paid by the Northern Securities Company for the Northern Pacific convertible certificates?

A. $34,709,000, to the best of my recollection.

Q. $34,709,000? 1314

Mr. Clough. Mr. Munn, you have it right there on that paper.

Mr. Munn. Is it on the other side of the paper?

Mr. Clough. It is right there on that paper, I think. (Referring to paper in possession of Mr. Munn.)

Mr. Munn. $34,709,062.50. That is right.

1315 Q. What did the Northern Securities Company subsequently do with those convertible certificates?

A. Surrendered them to the Northern Pacific Railway Company and received stock, common stock, of that company.

Q. Common stock of the Northern Pacific Railway Company?

A. Yes.

Q. Used this as a basis of subscription for the common stock?

A. We turned them in in payment of the common stock, or, rather, converted them into common stock. The name of the
1316 security itself shows that it is convertible to stock.

Q. At what price?

A. Dollar for dollar.

Q. And then what was done with the stock thus acquired?

A. We hold it.

Q. What?

A. We hold it.

Q. You still hold that Northern Pacific stock?

A. Yes.

Q. Did you issue Northern Securities Company's stock in
1317 payment for it?

A. For that $34,000,000?

Q. Yes.

A. No.

Q. You say you did not?

A. We did not.

Q. And that stock was taken at par? And not $115?

A. I have just stated that we took the convertible bonds and then exchanged them for the stock, dollar for dollar.

Q. Did you take the convertible bonds, dollar for dollar, for cash paid?

1318 A. Yes.

Q. So that you have acquired that $34,000,000 then of the Northern Pacific common stock at par?

A. At par.

Q. And no more?

A. And no more.

Q. Have you acquired any other Northern Pacific common stock on the same basis?

A. Do you mean buying it at par?

1319

Q. Yes.

A. No, I have not.

Q. On what basis did you issue the stock of the Northern Securities Company in payment for the $41,085,000 preferred stock?

A. $41,085,000 of preferred stock, and thirty-seven million and odd thousand dollars of common stock were acquired for a lump sum, part of which was payable in cash, and part of which was payable in stock of the Northern Securities Company. The stock was issued in that way and the cash was paid in that way. I never have separated them.

1320

Q. You don't know, then, at what rate you purchased this preferred stock, whether you gave 115 of the Northern Securities Company stock for one dollar of the preferred stock? You don't know?

A. I simply stated it was purchased for a lump sum, and I never separated the items.

Q. Were you present at the meeting of the board of directors of the Northern Securities Company on November 15, 1901, when this matter was before the board, the purchase of this stock?

1321

A. I don't remember the date, but whatever the date of the meeting was, I was present on that date.

Q. Was there any discussion at that meeting as to the price to be paid for this stock, and the basis of exchange?

A. No; that is, no open discussion. There was talk in various parts of the room.

Q. I notice here a resolution offered at that meeting.

Mr. Grover. What is the date of it?

Mr. Munn. November 15, 1901, 2:30 p. m. It is as follows:

"Resolved, That the president be and hereby he is authorized on behalf of this company to purchase said stock"—

1322

referring to the stock regarding which the president had made a statement, being this $41,085,000 preferred stock, and $37,023,000 common stock of Northern Pacific—"at an aggregate price of $91,407,500 payable as to $82,492,871 thereof in the fully paid up and non-assessable shares of the stock of this company at par, and as to $8,915,629 in cash, and authorizing the officers of the company to carry out that trans-

1323 action." Was there any discussion regarding that resolution when offered?

A. I don't recall any discussion except between men sitting around the table.

Q. You were gathered together there as an official body?

A. Yes.

Q. Board of directors. Now, was there any discussion by the members of that board, so gathered together, regarding this purchase of stock?

A. There was some discussion; I was paying more atten-
1324 tion to recording my minutes than anything else, and I didn't notice what the discussion was.

Q. You were the treasurer of the Northern Securities Company?

A. I was the treasurer.

Q. And of course interested in this transaction?

A. Certainly.

Q. And yet, you don't remember whether there was any talk there as to the basis of the exchange of this stock of the Northern Securities Company for the preferred and common of the Northern Pacific?

1325 A. I have stated that I was busy in taking the minutes at the time.

Q. I understood that.

A. And was paying more attention to them than to any discussion that was going on.

Q. It was immaterial to me what you were paying attention to, but did you hear any discussion?

A. I was simply answering your question.

Q. Did you hear any discussion?

A. I stated that I heard some talk about the table, but I don't remember what it was.

1326 Q. Give that talk as you remember it, please.

A. Oh, I couldn't remember; I didn't charge my mind with it at all, and I don't remember anything about it.

Q. It was an important transaction to the Northern Securities Company?

A. Yes.

Q. And you were its treasurer?

A. I was its treasurer

Q. And you heard some conversation, but don't remember 1327
what it was?

A. No, because I was attending to my duties, doing something else at the time.

Q. Was this resolution offered in writing?

A. It was partly in writing and partly oral.

Q. The resolution itself was in writing, was it not, when offered?

A. Part of the resolution was in writing. The figures were given to me and I filled them in in the blank that was given to me. 1328

Q. So all you had to do was to fill in the figures given you in the resolution?

A. Yes.

Q. That was the extent of your duties regarding this resolution?

A. That was the extent of my duties except to record them.

Q. I suppose you didn't record them until after the meeting?

A. I made some memorandum of it at the time.

Q. Yes. What memorandum did you make—anything other than what is here in the report of the meeting, the rec- 1329
ords?

A. No, except what you see there in the record.

Q. All I see in the record is this resolution with the amounts filled in as you say you filled them in.

A. I filled them in.

Q. So, all you had to do was to fill in those amounts?

A. Yes.

Q. That did not take you all the time that this discussion was going on, did it?

A. I can't say exactly how long it took me; it took me some few minutes to fill them in; they were not all given me 1330
at once.

Q. You say the amounts were not all given to you at once?

A. No.

Q. Was the discussion as to those amounts before they were given to you?

A. I could not say what the discussion was about, I didn't hear it.

1331 Q. You didn't hear any discussion?

A. I simply know they were talking there, Mr. Munn, I didn't hear the discussion, I told you that before.

Q. Who gave you those amounts?

A. Some of the directors there; I couldn't say who, exactly.

Q. Do you remember who offered the resolution?

A. No, I do not.

Q. The record shows, preceding this resolution, that the president stated that he had an opportunity of acquiring
1332 $37,023,000 of the common stock and $41,085,000 of the preferred stock of the Northern Pacific at an aggregate price of $91,407,500, then stating the terms of payment. Now, that had been reported to the meeting according to your report of those proceedings?

A. Yes.

Q. Prior to the time this resolution was offered. So you had those figures at the time the resolution was offered?

A. I think these figures were filled in afterwards.

Q. Well, was this report of the president in writing, or was it an oral statement made by him?

1333 A. I think it was an oral statement.

Q. Did he have these figures on a piece of paper or memorandum of any kind?

A. I don't know; I don't remember whether he did or not.

Q. Now, Mr. Nichols, I want to get, if I can, what was said at the time this resolution was offered, what discussion took place.

A. Yes.

Q. Now, it appears that the amounts which you say you obtained had been stated by the president prior to the time this resolution was offered, or possibly at the same time.

1334 Mr. Young. Has he so stated?

Mr. Munn. The record shows that here. I am reading from the record.

Q. The resolution, you say, was in writing, and you think you filled the amounts into that resolution. Now, your attention could not have been taken up, could it, so you could not hear what was said in a matter as important as this?

A. Well, all I can say is that I did not hear the discus- 1335
sion, Mr. Munn.

Q. You mean that you did not hear it or that you do not remember it now?

A. Now, I was in the room. What I mean is that my attention was not drawn to it particularly.

Q. You have stated that you heard some of the discussion. Now, can you give us anything you heard?

A. No, I cannot; I can't remember anything about it.

Q. Do you remember when the Northern Securities Company subscribed to those convertible bonds or those convertible certificates? 1336

A. I can't give the date. It was between the time they were offered under the circular of the company and the date fixed for the payment of them.

Q. Now, was it about the same time that they acquired the stock, the preferred stock?

A. The $41,000,000?

Q. Yes.

A. Subsequent to that.

Q. Well, the authorization for this subscription was made at that same meeting of the board of directors, was it not? 1337

A. I couldn't say; the minutes will state.

Q. The minutes so show, Mr. Nichols. I don't want to be unfair with you about it. The minutes so show. Did the Northern Securities Company have the cash on hand for the purchase of this preferred stock at that time?

A. At what time?

Q. At the time these resolutions were passed.

A. It was necessary to have upwards of $8,000,000 to carry out that transaction. I think we made the loan between the time the resolution was passed and the date of payment. We didn't provide the money until it was needed. 1338

Q. Was that loan of upwards of $9,000,000 subsequently paid?

A. It has been paid in part.

Q. It has not been fully paid yet?

A. Not fully paid, no.

Q. Was it paid in part out of any proceeds realized from that transaction?

1339 A. What transaction do you refer to?

Q. The acquisition and exchange of this stock.

A. It was paid in part out of the money realized from the sale of the Northern Pacific preferred stock.

Q. What?

A. Yes.

Q. To what extent?

A. About $6,000,000, I should think; about $6,000,000 paid on that account.

Q. Now, in order that we may have it clearly on the record will you state consecutively the exact steps taken, giving the
1340 amounts paid and received in carrying out this transaction, stating in that connection the securities, if any, received as a part of the transaction?

A. Do you mean simply the cash received and the cash disbursed?

Q. The cash received and cash disbursed, the securities received and the securities exchanged, as well as certificates.

A. We purchased $41,085,000 of Northern Pacific preferred stock and about $37,023,000 of common stock, and we paid for that with $82,491,871 in stock of the Northern Securities Company, and the balance $8,915,629 in cash.

1341 Q. Now, at the end of that the Northern Securities Company had issued the amount of stock you have testified and had in its possession the preferred and common stock of the Northern Pacific Railway Company?

A. Yes.

Q. It actually received those certificates?

A. It did.

Q. And had them assigned on the books of the Northern Pacific Railway Company to it, or, rather, transferred on the books?

1342 A. I don't think the preferred stock was ever transferred into the name of the Northern Securities Company, but of that I cannot be sure. The common stock was.

Q. As a matter of fact, was that stock ever in the possession of the Northern Securities Company at all?

A. Why, certainly it was; it was in my possession as treasurer of the company.

Q. Was it assigned in blank?

1343

A. It was assigned in blank.

Q. It was not assigned to J. P. Morgan & Company?

A. No.

Q. Or to the Northern Securities Company?

A. Nor to the Northern Securities Company.

Q. Do you remember by whom that assignment was executed?

A. Do you mean in whose name the stock stood at that time?

Q. Yes.

A. I am not sure, but my recollection is that it was in the 1344
name of E. H. Harriman and Winslow S. Pierce.

Q. As trustees?

A. I don't recall whether the word "trustees" was there or not.

Q. That was true as to the common stock also, was it not?

A. I think both of them were registered in the same way.

Q. So that when you received these certificates you knew that you had gotten them from E. H. Harriman and Winslow S. Pierce as trustees, or as individuals?

A. I knew the stocks stood in those names.

Q. Now, what did you next do with that stock?

A. I think I pledged a portion of the preferred stock to se- 1345
cure a loan.

Q. This loan of nine millions and some odd thousand dollars?

A. Yes.

Q. Did you take a portion of it as security for the loan you had made?

A. I don't remember whether I took any collateral myself or not. Being treasurer of the company I thought I was quite well secured.

Q. You thought that you were secured. Do you remember 1346
how much of this preferred stock you pledged as security for that loan?

A. No, I do not remember; enough of it to secure it; what the bank required; a portion of it.

Q. And what did you do with the balance of the preferred stock?

1347 A. Held it in the treasury of the company.

Q. Until what time?

A. Until it was redeemed by the Northern Pacific Railway Company.

Q. That was January 1, 1902?

A. January 1, 1902, was, I believe, the date.

Q. Did the Northern Securities Company receive the cash for that?

A. They did.

Q. Of forty-one millions?

A. Yes, they received the cash for that.

1348 Q. —and eighty-five thousand dollars?

A. $41,085,000.

Q. In the meantime what became of the stock which you had pledged? Did you surrender that also?

A. Personally?

Q. No, officially.

A. I requested the people who held it as collateral to surrender it for redemption and apply the proceeds in reduction of the loan, but it was cash to me because it was immediately applied to reduce that loan.

1349 Q. Then your books would not show a cash transaction on that day of $41,085,000?

A. My books would show a cash transaction for the whole amount, but a portion of that cash handled through the bankers who were lending us money.

Q. It never came to you at all?

A. Certainly it came to me; we owed that money and I requested the banker to cash that collateral and apply the proceeds on the loan. It was precisely the equivalent of cash to me.

Q. But you had already given credit or entered the item on

1350 your books of the cash borrowed, had you not?

A. Certainly.

Q. Then you would not enter again the cash received which was paid in payment of that debt, would you?

A. Certainly I would.

Q. What I am getting at: the cash never came to the Northern Securities Company for that portion of the debt?

A. Certainly, we got the benefit of the cash.

Q. You got the benefit of it, but you didn't receive it? 1351

A. It was simply this, that I cleared the transaction through my bankers. Such transactions are made every day. I do it constantly.

Q. Oh. I understand that, Mr. Nichols. But I am getting at this statement you have brought in here showing that you received at a certain time $41,085,000 in cash.

A. That is cash.

Q. Now, I want to know if you did receive that amount of cash on that day?

A. Certainly; $34,709,000 of it actually in a check; and the balance in a check to my bankers who applied it to my account under my instructions. 1352

Q. In the way of credit?

A. They received the actual cash themselves and applied it in reduction of my loan according to my instructions; they simply acted as my bankers in the matter, and therefore it was cash to the company.

Q. Had you at that time, or had the Northern Securities Company at that time made the subscription for these convertible certificates?

A. Prior to the redemption of the preferred stock? 1353

Q. Yes.

A. Yes.

Q. Did you receive those convertible certificates?

A. I did.

Q. Had you paid for them?

A. I paid for them at the time I received them.

Q. From whom did you receive the cash for that transaction?

A. I took it out of my bank.

Q. Had you got the $41,000,000 then, before you surrendered your preferred stock? 1354

A. No, the two transactions came together at about the same time. I know that I had cash in the bank——

Q. Then, I misunderstood you. I understood you to say you subscribed for and took convertible certificates before you surrendered the preferred stock.

A. I don't think I said so.

Q. I understood you to say so. Well, did you, in fact, ob-

1355 tain the convertible certificates before you surrendered the preferred stock?

A. I think the transactions were coincident; that is, they were on the same day.

Q. That is, all done at one time. So that on the day that you surrendered the preferred stock and received the forty-one millions and some odd thousand dollars you either subscribed for or carried out a subscription agreement which you had prior to that time made for a certain amount of the convertible certificates and paid for those out of the money you received from the preferred stock?

1356 A. I don't know that I quite understand your question, Mr. Munn; it is rather a long question.

The question was read.

A. Certainly, paid for out of the money I received from the preferred stock.

Q. Then, Mr. Nichols, as a matter of fact, the whole transaction consisted in an exchange of a portion of the preferred stock for a certain number of the convertible certificates and the cash transactions were entered only to carry out that particular deal?

1357 A. They were actual cash transactions on the books.

Q. But were there any cash transactions in fact? Was there anything more than an exchange of the securities for the certificates?

A. They were actual cash transactions.

Q. Did you receive the money and turn it back again in the way of a check or cash payment?

A. I received the money, deposited it, and then drew my check in payment for the convertible bonds.

Q. Were they convertible bonds or convertible certificates?

A. We call them convertible bonds or certificates.

1358 Q. Both. Where was that money deposited?

A. In J. P. Morgan & Company's.

Q. Then J. P. Morgan & Company simply made a cross-entry on their book?

A. I don't know what they made.

Q. You didn't receive the cash as treasurer of the company?

A. I did.

1359 Q. Turned over to you the cash itself?

A. Turned over to me.

Q. The cash itself?

A. Oh, no.

Q. Was the check turned over to you?

A. The check of the Northern Pacific Railway Company was turned over to me for the redemption of the preferred stock. I deposited that check in J. P. Morgan & Co.'s and then drew my check on them in payment for the convertible bonds.

1360 Q. The cash never came out of J. P. Morgan & Co.'s office at all, then?

A. I don't know anything about that.

Q. So that, in effect, all that took place was an exchange of the preferred stock by transferring to your account the cash received, and then turning it back in payment for the convertible certificates or bonds?

A. I have stated the actual transaction. The inference is yours.

Q. Well, isn't that a statement of the transaction?

A. It is your statement of it, sir.

1361 Q. What?

A. It is your statement of it.

Q. Well, is that correct?

A. Not from my point of view. I considered it a cash transaction, just exactly as I have testified.

Q. Was anything more done than what I have stated?

A. I have stated what I did; it is in my testimony.

Q. Very well. Will you please answer the question now? Was anything more done than what I have stated?

A. Will you repeat your statement?

1362 The following question was read to the witness: "Then, Mr. Nichols, as a matter of fact, the whole transaction consisted in an exchange of a portion of the preferred stock for a certain number of the convertible certificates, and the cash transactions were entered only to carry out that particular deal?"

A. In my mind it was not a question of exchange at all. I made the cash transactions and they were so entered upon my books.

1363 Mr. Munn. Very well, we will leave that.

We offer now as a part of this examination and the testimony of this witness the minutes of the directors' meeting of the Northern Securities Company, held at 27 Pine street in the City of New York on the 15th day of November, 1901, at 2:30 P. M., pursuant to adjournment, of which adjournment written notice had been sent to all directors. I will read the minutes now, if you don't object.

"Present: Messrs. James J. Hill, George F. Baker, Daniel S. Lamont, N. Terhune, George W. Perkins, W. P. Clough,
1364 George C. Clark, John S. Kennedy, D. Willis James and E. T. Nichols.

"The president occupied the chair.

"The minutes of the adjournment of the directors' second meeting, held at 31 Nassau street, in the City of New York, at 2 o'clock P. M., on November 14th, 1901, were then read and approved.

"Upon motion, duly made and seconded, it was unanimously resolved that in case of absence or disability of the president his duties and authority shall be exercised by the respective vice presidents in the order of their numbers, be-
1365 ginning with the first.

"The president stated that he now had an opportunity of acquiring $37,023,000 par value of the common stock and $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company at an aggregate price of $91,407,500, payable as to $82,491,871 in the fully paid up and non-assessable shares of this company at par, and as to the remaining $8,915,629 in cash. On motion and by affirmative vote of all the directors present, it was resolved that the president be and hereby he is authorized in behalf of this company to purchase said stock, namely, $37,023,000 par value of the com-
1366 mon stock, and $41,085,000 par value of the preferred stock of the Northern Pacific Railway Company, at an aggregate price of $91,407,500, payable as to $82,491,871 thereof in fully paid up and non-assessable shares of the capital stock of this company at par, and as to $8,915,629 in cash, and that the officers of this company be and hereby they are authorized to issue fully paid up and non-assessable shares of stock of this company to the amount of $82,491,871, and to pay $8,915,629

in cash in consideration of such $37,023,000 of the common 1367
stock and $41,085,000 of the preferred stock of the Northern Pacific Railway Company.

"Resolved, that the president be and hereby he is authorized at any time to retire at par for cash any and all preferred stock of the Northern Pacific Railway Company that may be acquired by this company, and in case such retirement shall be effected prior to January 1, 1902, to allow interest up to January 1, 1902, at the rate of four per cent. per annum on the sum receivable for such preferred stock.

"Resolved, that the president be and hereby he is author- 1368
ized in behalf of this company to purchase at their par value an amount of the convertible certificates of the Northern Pacific Railway Company to be issued pursuant to the resolutions of the board of directors of the Northern Pacific Railway Co., passed November 13th, 1901, equal to 75/80 of the par amount of any and all common stock of the Northern Pacific Railway Company that shall have been acquired by this company.

"Resolved, that the president be and hereby he is authorized in case of the purchase by this company of any of the convertible certificates of the Northern Pacific Railway Com- 1369
pany, to convert the same into common stock of the Northern Pacific Railway Company whenever such conversion may be effected.

"Resolved, that the president be and hereby he is authorized to borrow on such terms as he may arrange any moneys required for the purpose of carrying out the foregoing resolutions, and to make all financial arrangements and to do all acts and things which he may deem needful in the premises.

"The meeting thereupon, on motion duly made and seconded, was adjourned until 2 o'clock P. M., of Tuesday, November 19th, 1901, at the office on the ninth floor of the build- 1370
ing No. 27-29 Pine street, New York City."

Q. Can you state how much cash the Northern Securities Company had on hand on the 2nd day of January, 1902, after this transaction was closed?

A. Not from memory, no.

Q. Will you kindly get that from your records so that it may be inserted at this point in your testimony?

1371 A. Yes. 2nd of January, 1902?

Q. Yes. And also on the first of January of the same year. Those two days.

Mr. Clough. You mean at the close of business on those days?

Mr. Munn. At the close of business on those days.

Mr. Clough. Close of business on the first and also at the close of business on the 2nd?

Mr. Munn. Well, I will change that. I want it at the opening and the close of business on January 1, 1902, and at the close of business on January 2, 1902.

1372 Q. I notice in the minutes of the meetngs of the directors of the Northern Securities Company that certain persons were appointed 5th, 6th and 7th vice-presidents. Do you remember their names?

A. Let us see. There were a number of vice-presidents appointed and a number of assistant treasurers.

Q. These appointments were made during November of 1901?

A. Yes.

Q. Now, can you give the names as to that date?

1373 A. A. W. Clark was one of the vice-presidents; Charles A. Kittle was one of the vice-presidents or an assistant treasurer, I am not sure which; Richard Outwater was one of the vice-presidents.

Q. I noticed they were appointed for the purpose of transferring stock and exchanging the stock of the Northern Securities Company for stock of the Great Northern and Northern Pacific. That is, they were authorized to sign certificates.

A. I think you have read the minutes wrong.

Q. Possibly I have; I am speaking from memory only. What

1374 were their duties?

A. Simply to sign stock certificates.

Q. Simply to sign stock certificates, not to issue them?

A. Not to issue them; merely to sign them.

Q. Mr. Clough has testified that on December 11th, 1901, the Northern Securities Company first began taking stock of the Great Northern Railway Company in the name of third parties as trustees for the Northern Securities Company. Do

you remember anything being said about that time regarding 1375
that matter, or any instructions given you regarding it?

A. No; I think I did it myself.

Q. What?

A. My recollection is that I did it myself.

Q. You began doing that?

A. I began doing that.

Q. Without any instructions from anybody?

A. As far as I can recall I had no instructions at all. I may have discussed it as a proper thing to do.

Q. With whom did you discuss it? 1376

A. I think possibly with the counsel of the company, Col. Clough.

Q. What?

A. Col. Clough.

Q. That is, you and Col. Clough discussed it together?

A. I simply asked him whether we had not better do that as I needed collaterals from time to time, and that it would be better to have the stock in the name of an outside party when it was put up as collateral.

Q. Were you borrowing money during those times?

A. We were borrowing money all the time, yes. 1377

Q. The statement which you have submitted here does not show any money obtained during that time, as being borrowed, aside from the item which was borrowed to purchase this preferred stock?

A. Well, we expected to borrow money later on.

Q. You expected to borrow money later on?

A. Yes.

Q. But you never have?

A. We have borrowed money since, yes.

Q. How much?

A. Oh, I couldn't say. In the aggregate we have had as 1378
high as six and seven millions; as near as I can remember about seven millions is the highest.

Q. At what time?

A. Some time during the spring or summer.

Q. Did you and Col. Clough discuss the attitude the State of Minnesota had taken, or that the Governor of the State of Minnesota had taken, regarding the holding by the Northern

1379 Securities Company of the stock of the Great Northern and Northern Pacific at the same time?

A. No, not at the time.

Q. At the time you discussed the advisability of taking this in the name of trustees?

A. No.

Q. Are you sure about that?

A. Perfectly sure.

Q. Did you inform the representatives of any of the brokerage houses here, who were sending stock in as agents of the owners, for exchange, that you desired to have the stock
1380 assigned in blank so that it could be placed in the name of trustees, for the purpose of protecting the Northern Securities Company?

A. I don't recall ever having done so, no.

Q. What?

A. I don't think I ever did so, no.

Q. Well, you would recollect it if you did, would you not?

A. I would certainly recall it if I had.

Q. Did you not state to some of the representatives of two or three different houses, sent up to exchange stock, that you
1381 wished to have it assigned in blank so that it might be held outside the name of the Northern Securities Company?

A. I don't recall doing so, no.

Q. And yet you desired to have it held outside of the name of the Northern Securities Company?

A. That is perfectly easy.

Q. I say, you desired that to be done?

A. I desired it to be done when it was sent in, do you mean?

Q. Yes.

A. It was a matter of perfect indifference to me whether
1382 they assigned it or not when it was sent in.

Q. You didn't care to have it assigned to the Northern Securities Company in every instance, did you?

A. It didn't make any difference; I never instructed anybody in regard to it.

Q. Did you ever instruct anybody or request anybody to have it transferred in blank?

A. I can't recall that I ever did, no.

Q. Did you ordinarily receive it transferred in blank? 1383

A. Sometimes it came in blank and sometimes it came filled out to the Northern Securities Company.

Q. Up to November 11, 1901, the Northern Securities Company had received upwards of $49,000,000.

Mr. Young. It didn't exist then.

Q. Pardon me, I mean on December 11th. On December 11th, 1901, the Northern Securities Company had received upwards of $49,000,000 of the stock of the Great Northern Railway Company, had it not?

A. I couldn't say whether they had at that time or not, I don't recall the exact amount on any particular date. 1384

Q. You haven't examined the books so that you can testify on that?

A. I have not examined the books.

Q. Mr. Clough in his testimony states that the number of shares was 490,833, or $49,833,000 worth at that time.

A. Yes.

Q. Had any of that been assigned to trustees?

A. I couldn't say.

Q. Well, don't you know that it had not?

A. I don't know whether it had or had not. I don't remember the date. I remember we did put some stock in the name of individuals, but what the date was—you have given the date there. 1385

Q. Mr. Nichols, I am simply giving it from Mr. Clough's testimony; that is all I know about it.

A. Yes.

Q. Did not the Northern Securities Company receive and take in its own name over $49,000,000 worth of the Great Northern stock before you decided or discussed the advisability of holding any in the name of trustees?

A. I couldn't state the amount unless I referred to my books. 1386

Q. Will you kindly refer to your books and fix this, if you don't care to take Mr. Clough's testimony on it?

A. If Col. Clough testified to that effect I have no doubt it was entirely correct. I don't dispute that. That wasn't the point.

1387 Q. So that at some time prior to December 11, 1901, the Northern Securities Company have received upwards of $49,000,000 of the stock of the Great Northern Railway Company, taken in its own name, before you and Col. Clough decided it was advisable to take some in the name of trustees?

A. We had received a large amount. If Col. Clough testified that was the amount on December 11, I have no doubt it was. I haven't consulted the books.

Q. Did you discuss or did the executive committee discuss the advisability of taking this in the name of trustees?

1388 A. Never to my knowledge.

Q. Did any other official or representative of the Northern Securities Company, beside you and Mr. Clough, discuss that?

A. Not with me.

Q. Did you know of any other discussion on the subject?

A. Never.

Q. Did you and Col. Clough decide that matter for the Northern Securities Company?

A. My recollection is that I suggested it and said that I should want some collaterals and we had better put some

1389 stock in other names.

Q. Was that stock transferred to those trustees on the books of the Great Northern Railway Company?

A. It has been, yes.

Q. When was that done, do you know?

A. Oh, at various times as the stock came in.

Q. Do you know how much stands in the name of trustees?

A. Oh, I should say three hundred and odd thousand shares, something like that.

Q. How much does the Northern Securities Company still hold of the Great Northern stock that is transferred in blank?

1390 A. There is no stock so held.

Q. Who are the trustees to whom this stock has been transferred?

A. I put it in various names.

Q. Will you give me the names of some of them?

A. I couldn't without reference to the books. The stock was put in their names and then put away in the vault. The

record is on the books. I didn't charge my mind with that 1391
detail.

Q. Who selected those trustees?

A. I did.

Q. How many of them are there?

A. I think there are probably about half a dozen.

Q. Are they clerks or employees of the Northern Securities Company?

A. I think there are two or possibly three of them who are.

Q. Can you give me their names?

A. Well, I couldn't, for the reason that I have several 1392
clerks in my office and I don't remember at the moment which ones I have used. I have no objection to giving you the names.

Q. Will you give me the names of all the trustees?

A. How do you mean? Of all the trustees?

Q. Yes.

A. No, I——

Q. I say will you give me the names of all the trustees?

A. I will give you the names of all of them.

Q. You say they are six in number?

A. I say I think about half a dozen. 1393

Q. Do I understand you to say that you and Col. Clough took the responsibility of selecting these trustees and taking this stock in their names as trustees?

A. Yes.

Q. For the Northern Securities Company, without consultation with anybody else?

A. Certainly. I would have taken the responsibility myself if the Colonel had not been there. It is merely an executive duty.

Q. You had no talk about it up to December 11, 1901?

A. None whatever. 1394

Q. Do you know the date of the publication of the statement by Mr. Hill in the West regarding the holding of the Great Northern stock by the Northern Securities Company?

A. No.

Q. Who is Mr. Outwater?

A. He is clerk in the office of J. Kennedy Todd & Company.

Q. And Mr. Kittle?

1395 A. Also in the same office. Oh, no, not now; he isn't in that office now. He is now in a firm of his own.

Q. Where is Mr. Outwater? Is he still there?

A. I believe so.

Q. Did you ever state to either one of those gentlemen that you desired to have the stock of the Great Northern Railway Company held in the name of somebody other than that corporation?

A. To those gentlemen?

Q. Yes, either one of those gentlemen. Did you ever re-
1396 quest them to make any transfer to a trustee so that the stock would, apparently, not be held by the Northern Securities Company?

A. No.

Q. Sure about that?

A. Absolutely.

Q. Did you to any other person?

A. No.

Q. How many record books have you of the meetings of the directors of the Northern Securities Company?

A. One book of records of the meetings of the directors
1397 and shareholders, and one of the executive committee.

Q. Those are separate books and are the books shown me last evening?

A. They are the books shown you last evening.

Q. And those are the only records you have of the meetings?

A. Those are the only records.

Q. I noticed by those records there had been only four meetings of the executive committee during the year 1902?

A. Yes.

Q. I think that is right.

1398 A. Whatever the number is, it was shown in the book.

Q. Have you made any annual report yet, or prepared any annual report, of the Northern Securities Company?

A. I have not.

Q. Has any statement of its transactions or its financial condition been made yet?

A. None that I know of.

Q. Has any been prepared?

1399

A. None.

Mr. Clough. You have one.

Mr. Munn. That is the one you have just handed me now?

Mr. Clough. Yes; covering the period you asked me about.

The Witness. I understood you for the public.

Mr. Munn. That was my question. Public or stockholders.

The Witness. Neither.

CROSS-EXAMINATION.

1400

By Mr. Young:

Q. What is the fiscal year adopted by the Northern Securities Company for its business—beginning and ending when?

A. I couldn't say that any fiscal year has been absolutely adopted. At the last annual meeting the sense of the meeting was given for having the fiscal year commence on the 1st of January and end on the 31st of December.

Q. You were asked, if I recollect, whether prior to the 11th of December you had caused any stock to be registered or placed in the names of others than the Northern Securities Company. Had you done so as early as the 11th of December?

1401

A. I couldn't fix the date except as Mr. Munn fixed it by the record. Personally I have no recollection and I have not consulted the books.

Mr. Munn. I think that is all, if you will get this information that is wanted.

EDW'D T. NICHOLS.

Subscribed and sworn to before me this 25th day of November, 1902.

1402

FREDERICK G. INGERSOLL,
Special Examiner.

A recess was here taken until 2 o'clock P. M.

1403 (From U. S. vs. No. Sec. Co., Vol. 1, pp. 180-224.)

JOHN S. KENNEDY, after being first duly sworn, testified as follows, in answer to questions by Mr. Lancaster:

Q. Your name is John S. Kennedy?

A. Yes.

Mr. Kellogg. The defendant objects to any testimony and to each and every question and answer on the ground that it is incompetent, irrelevant, and immaterial, and that the bill in equity states no ground for equitable relief and no cause of
1404 action against the defendant company, and further, that no relief can be had in this cause affecting the interests of the Northern Securities Company without said company, or any of the stockholders of the Northern Pacific Railway, each being made parties to the bill. Now, may it be stipulated that this objection may be renewed as to every question?

Mr. Lancaster. Certainly.

Mr. Kellogg. May not be renewed, but may be considered as made to each and every question.

Mr. Lancaster. Certainly.

1405 Q. Mr. Kennedy, you reside in New York?

A. Yes.

Q. And have for many years?

A. Yes.

Q. And you have been a stockholder of the Great Northern Railway Company since its organization?

A. Yes.

Mr. Kellogg. That is especially objected to as wholly irrelevant to this issue.

Q. You may answer, Mr. Kennedy.

A. I have answered this.

1406 Q. Have you ever been a director in the Great Northern Railway Company?

A. No, sir; never.

Q. You have always been a large stockholder in the Northern Pacific since its reorganization?

A. Yes.

Q. And you have been a director in the Northern Pacific Railway Company since its reorganization.

1407

A. Yes, since its reorganization.

Q. How long have you been a director in the Northern Pacific?

A. I think, according to my recollection, it was two years ago last summer that I was elected.

Q. I asked you if you had been a stockholder in the Great Northern Railway Company, and you stated that you had. You have been one of the largest individual stockholders in the Great Northern road since its reoganization in 1889, have you not?

1408

A. I have been a large stockholder; whether one of the largest, I cannot say.

Q. Is it not a fact that you and Mr. Hill and Lord Mount Stephen and Lord Strathcona and George F. Baker have been the largest individual stockholders of the Great Northern Railway Company?

A. I think probably we have.

Q. You are also at the present time a director in the Northern Securities Company?

A. Yes.

Q. Can you state the date of your election to the board of directors of the Northern Securities Company?

1409

A. I cannot. I think it was some time in November.

Q. You are also a director in the Chicago, Burlington and Quincy Railway Company?

A. Yes.

Q. And do you remember the date of your election as such director?

A. I do not; it was some time, I think, in the autumn, or latter part of last year, but I do not remember the date.

Q. In 1896, upon the reorganization of the Northern Pacific Railway Company, did you and Mr. Hill, Mr. Baker, D. Willis James, Lord Mount Stephen, and Lord Strathcona purchase

1410

in the neighborhood of $26,000,000 of Northern Pacific stock?

A. I don't remember the amount that was purchased, nor who all the parties that were united in the purchase, but there was a block of stock sold at that time, and I took an interest in the purchase.

Q. Do you remember the amount, Mr. Kennedy?

A. I do not.

1411 Q. Approximately?

A. Not even approximately.

Q. Mr. Hill, in his testimony, referred to you and Mr. Baker —George F. Baker—and D. Willis James, Lord Mount Stephen and Lord Strathcona, and J. A. Livingston, J. W. Sterling, and Oliver Payne, and, I think, Mr. Cannon, as being the associates in the Great Northern, and also his associates in the purchase of a large block of the Northern Pacific at the time of the reorganization. Is that your recollection, that you gentlemen were associated together?

1412 A. As far as I am concerned it was not purchased by an association. I was told that a block of stock was purchased, and I was asked to take an interest in it, which I did, but who all the parties were that purchased it I don't know.

Q. Did you take an equal interest, or did you buy a certain portion of that stock yourself individually?

A. I don't remember how it was divided up, but I got a certain portion of it. I was asked to take a certain portion of that stock, and I took it and paid for it.

Q. Do you remember Oliver Payne and H. W. Cannon as being two of the associates?

1413 A. I don't know; I never had any communication with them on the subject, or either of them.

Q. Did you have your dealings, Mr. Kennedy, directly with Mr. Hill in that matter?

A. I don't remember whether it was Mr. Hill or Messrs. Morgan, but I think I paid the money for the stock to the Chase National Bank. I was asked to pay there.

Q. Well, do you remember having negotiated with Mr. Hill in connection with this purchase of this Northern Pacific stock upon the reorganization?

A. All I remember is that he told me that Messrs. Morgan
1414 & Co. wished to dispose of a certain block of stock, and he asked me if I would take an interest in it, and after I conferred with him I told him I would.

Q. Now, did you hold that stock continuously down to November and December, 1901?

A. I held the greater part of it. I sold a little of it some time after, but by far the larger portion of it I held right along and hold it now.

Q. Can you give us approximately the amount of stock you yourself took in 1896? 1415

A. I think the amount I took was between 39,000 and 40,000 shares of the common, and I can't recall the amount of the preferred, but I think 3,000 or 4,000 shares. It may be more, but as near as I can remember, I think it was 3,000 or 4,000 shares.

Q. That was in 1896?

A. I don't remember the exact date. I think it was about that time.

Q. Did you sell any of the common which you got at that time prior to May 9, 1901? 1416

A. I did, but a very long time ago.

Q. And any considerable amount?

A. No; not a very large amount.

Q. Could you give us approximately the amount which you sold?

A. I can't—not more than 2,000 or 3,000 shares—maybe 4,000.

Q. About what number of shares of the common stock did you hold between the 1st of May and May 9th, 1901?

A. Thirty thousand. 1417

Q. Of the common?

A. Of the common.

Q. Did you at that time hold any of the preferred?

A. Yes.

Q. And about how many?

A. Eight thousand shares.

Q. During the time that you have been a stockholder in the Great Northern from 1889 down to the present time, or down, we will say, to December 31, 1901, has Mr. Hill held your proxy upon all that stock?

A. I have always given him my proxy for an election. 1418

Q. And he has always, to your recollection, now, has always had this proxy at every annual election?

A. So far as I can remember, unless I was absent in Europe. Some of those years I was not here to give it, but as far as I remember he has always had my proxy for every election.

Q. Personally you have never attended the stockholders' meetings of the Great Northern?

1419 A. No, sir, I never did; at least I have no recollection of it. I do not think I ever did.

Q. I think you stated two years ago you were a member of the board of directors of the Northern Pacific during the year 1901?

A. Yes.

Q. When was the proposed purchase of the Burlington first brought to your attention?

A. It was some time in the month of March.

Q. 1901?

A. 1901.

1420 Q. Was it brought to your attention before the matter was submitted to the board of directors?

A. I heard that negotiations were proceeding with a view of making the purchase, and, so far as I know, before it was brought before the board of directors.

Q. You knew the plan of purchase, did you not, before it was submitted?

A. I knew indefinitely, and I may explain to you here that negotiations were proceeding when I went to Europe and I was not here when the matter was consummated.

Mr. Kellogg. What board did you refer to?

1421 Mr. Lancaster. The board of directors of the Northern Pacific.

Q. I am referring to the board of directors of the Northern Pacific, Mr. Kennedy.

A. I so understood.

Q. Mr. Kennedy, did Mr. James J. Hill consult with you in reference to the proposed purchase of the Burlington?

A. He did.

Q. And the general plan of the purchase was outlined by him to you?

1422 A. The general plan was outlined by him to me. What he thought of doing, or thought could be done.

Q. And at that time you were a director of the Northern Pacific and a large holder of stock in the Northern Pacific?

A. Yes.

Q. And also a large holder of stock in the Great Northern?

A. Yes.

Q. I understand you to say you were absent in Europe at

the time the matter was submitted to the board of directors 1423
of the Northern Pacific?

A. Yes; I was absent in Europe.

Q. At that time what were your individual holdings in the Great Northern?

A. At that time my individual holdings in the Great Northern, I think, were about 96,000 shares.

Q. What time did you return from Europe, Mr. Kennedy?

A. I returned from Europe on Saturday, I think it was the 8th of June.

Q. Did you purchase any Northern Pacific in the spring and 1424
early summer prior to June—did you purchase any additional stock?

A. No, sir; not a share.

Q. Did you sell any?

A. Not a share.

Q. Prior to your departure for Europe—I think you gave us the date that you left for Europe?

A. I left on the morning of the 2d of April.

Q. Prior to your departure for Europe on the 2d of April, had you had any conversation with Mr. James J. Hill in reference to the syndicate purchasing a majority of the common 1425
stock of the Northern Pacific?

A. No.

Q. Had the matter been discussed by you at all with Mr. Hill?

A. I have no recollection of the discussion of any such matter as that.

Q. Was such a thing suggested to you by Mr. Hill?

A. No, sir; I have no recollection of him making any such suggestion.

Q. At the time Mr. Hill suggested a purchase of the Burlington, the joint purchase of the Burlington by the Great 1426
Northern and Northern Pacific, was the matter of the control of the Northern Pacific discussed by Mr. Hill with you?

A. No, sir; it was not. I think the impression he gave me was that he and some other gentlemen in England, Lord Strathcona and others, and Messrs. Morgan & Co. had substantially the control of the road.

Q. And was that shortly prior to your going to Europe?

1427 A. Yes; prior to my going to Europe.

Q. Will you give us all the names, Mr. Kennedy, that you understood Mr. Hill to refer to as having a majority of the common stock of the Northern Pacific?

A. I can't give you all the names. I can mention some of them.

Q. Give those that you remember.

A. There was himself and myself, and there was Mr. D. Willis James and Lord Strathcona and Lord Mount Stephen; but as to the others I could not say.

Q. You don't remember his mentioning any others?

1428 A. I don't remember his mentioning any others.

Q. But you do remember his telling you at that time that these gentlemen whom you have named, together with himself and yourself, had a controlling interest of the common stock?

A. The impression he gave me was that with our holdings we had a majority of the common stock of the company—that is my impression. I do not say he stated so. I say that is the impression I gathered from what conversation took place. It is only an impression.

1429 Q. Among the associates he mentioned J. Pierpont Morgan & Co. were included?

A. I understood that they were holders of the stock, but when you talk of associates I don't know what you mean by that.

Q. Mr. Hill used the term, Mr. Kennedy, that is here referred to—myself and his associates—and he stated that yourself and Lord Strathcona and Lord Mount Stephen, and George F. Baker and D. Willis James, and possibly one or two others, constituted what he called his associates.

A. We were simply individual holders, the same as share-

1430 holders in any other company.

Q. You mean by that that you were acting in harmony so far as the voting of your stock was concerned?

A. It was a harmonious body and each were stockholders in the company, and everything was going harmoniously amongst us.

Q. As a matter of fact, you each, for a number of years, acted together in entire harmony?

1431

A. Yes.

Q. Both with reference to the Great Northern and Northern Pacific?

A. Yes.

Q. At the time of your departure, or previous to your departure for Europe, Mr. Kennedy, had you any information that Mr. Harriman, or Kuhn, Loeb & Co., representing Mr. Harriman, or representing the Union Pacific, were endeavoring to buy up a majority of stock of the Northern Pacific?

A. None whatever.

Q. When did you learn of such an attempt? 1432

A. The first I learned of such an attempt was when I was in France, about the early part of May—I forget the particular date.

Q. Did you learn that from Mr. Hill?

A. No, sir.

Q. Did you learn it from Mr. Morgan?

A. I did; I did not know who the parties were, and he didn't tell me who the parties were, but that there were parties apparently endeavoring to get control of the company.

Q. Did you have a personal interview at that time with Mr. Morgan, Mr. Kennedy? 1433

A. I did.

Q. Did Mr. Morgan at that time inform you that Mr. Hill and his associates had agreed not to sell any of their common stock?

A. He did not; at least I have no recollection of his saying anything of the kind.

Q. Were you requested by Mr. Morgan to make any disposition of your holdings of common stock?

A. No, sir.

Q. Did you volunteer the statement at that time that you would not make any disposition? 1434

A. I told him I would not, and I could not if I would. I was in France, I wasn't here to deliver the stock if I sold it.

Q. The stock was in New York?

A. The stock was in New York.

Q. This you say was the first part of May?

A. The early part of May; I can't fix the date—it probably was about, I should think, the 5th, 6th, or 7th of May—I can't remember the precise date.

1435 Q. Did Mr. Morgan inform you at that time that his firm had purchased a large block—two blocks—two separate blocks of stock in the Northern Pacific?

A. No, sir; I have no recollection of his saying anything to me about that.

Q. Did you, prior to May 9, agree to purchase any of the stock of the Northern Pacific?

A. No, sir.

Q. Did Mr. Morgan inform you that he was purchasing common stock for Mr. Hill?

1436 A. No, sir; he did not.

Q. Did he inform you that he was purchasing it for himself?

A. I have no recollection of his saying anything about making purchases at all.

Q. Did Mr. Morgan say anything to you at that time about purchasing the stock in Europe for himself and Mr. Hill and their associates?

A. No, sir; he never said a word to me of the kind.

Q. And you don't recall now that he mentioned Mr. Harriman?

A. I don't remember his mentioning Mr. Harriman's name.

1437 Q. Did he inform you that it was the Union Pacific that was trying to purchase it?

A. No, sir; all that I remember about it is that there were parties evidently purchasing the stock in New York, and he seemed to think it was with a view of getting control.

Q. As I understand you, then, at that time, Mr. Kennedy, you didn't have any idea who the parties were?

A. No.

Q. You don't know whether they were connected in any way with the Union Pacific or the Oregon Short Line?

A. No, sir; I did not know who they were.

1438 Q. And Mr. Morgan didn't volunteer any information in that respect?

A. I can't recall the slightest reference to anything of that kind.

Q. Well, very soon after that you did learn that it was Mr. Harriman, or Kuhn, Loeb & Co., acting with Mr. Harriman and the Union Pacific?

A. After Mr. Morgan left I learned that in the newspapers;

it was in the London Times—in the cable correspondence of 1439
the London Times; it had very full cable news every day, and I saw it there.

Q. Upon your return from Europe, Mr. Kennedy, did you acquire additional common stock in the Northern Pacific?

A. Not immediately upon my return.

Q. How soon after?

A. It was some time in the autumn; I think it was the month of August.

Q. From whom did you get that stock?

A. From J. P. Morgan & Co.

Q. Did you get that stock from him individually or in con- 1440
nection with Mr. Hill?

A. I got the stock from J. P. Morgan & Co. and paid J. P. Morgan & Co. for it.

Q. How many shares of the common did you purchase at that time?

A. I purchased 10,000 shares.

Q. How did you come to make that purchase, Mr. Kennedy?

A. I was in New York, and I was told that they wished to sell some of their stock, and I was asked if I would take any of it, and I agreed to take 10,000 shares.

1441

Q. Had Mr. Hill spoken to you about this purchase prior to your making the purchase?

A. He admitted to me that J. P. Morgan & Co. would like to dispose of some of their holdings.

Q. Did you understand at that time, Mr. Kennedy, that J. P. Morgan & Co. had purchased $16,000,000 or $18,000,000 of the stock, par value, of the common, between May 1 and May 9, 1901?

A. I had no knowledge as to when they acquired it or how they acquired it.

Q. You do know, however, that J. P. Morgan & Co. had 1442
purchased a very considerable amount of that stock shortly previous to May 9, 1901, did you not?

A. I don't know when they purchased it.

Q. Well, did you not purchase this $1,000,000 par value, or 10,000 shares, of Mr. Morgan at Mr. Hill's suggestion and request?

A. Mr. Hill asked—I believe suggested—if I would like to

1443 purchase any more stock, and said that they had some which they were willing to part with, and I told him that I would purchase some of it, and finally I agreed to take 10,000 shares.

Q. Do you know, of your own knowledge, that other gentlemen whom you have mentioned here as associates—D. Willis James, Lord Strathcona, Lord Mount Stephen, and Mr. Hill—about the same time purchased from J. P. Morgan & Co.?

A. That I didn't know anything about.

Q. Do you know now whether or not they made purchase about the same time you did from J. P. Morgan & Co.?

1444 A. All I remember is Mr. James telling me he had taken some of the stock about the same time I did—I think in October. I might say to you, to save you trouble, that when I returned on the 8th of June I left the city again on the 10th of June, and except for three or four days in the beginning of August I was not here again until the beginning of October.

Q. Did you negotiate for the purchase of this stock from J. P. Morgan & Co. personally, Mr. Kennedy?

A. I bought it from that firm and I paid them for it, as I have already stated.

Q. I mean did you conduct the negotiation yourself, or did

1445 Mr. Hill for you?

A. Mr. Hill spoke to me about it, and I told Mr. Morgan, or some of his partners, I would take the stock. Mr. Hill had suggested they wanted to sell some, and I would take that much.

Q. Mr. Kennedy, when was the first suggestion made to you or by you with reference to the organization of a Central Securities Company or a Holding Securities Company? I don't know as the name was agreed upon at that time.

A. Such a thing had been talked of for a long time—some years, I think; but at the time it was first spoken of to me it

1446 only had application to the Great Northern Railway stock.

Q. When you say a long time you mean——

A. Some years.

Q. How many years?

A. I can't recall how many; it was a matter Mr. Hill had talked to me about and I to him about repeatedly.

Q. What was the purpose and object of the securities company that was to be formed that you first discussed? Will

you state in your own way just what the object and purpose 1447
of that company was?

A. It was simply to hold the stock which some of the principal stockholders held in one block.

Q. Will you give the names of the principal stockholders?

A. I have already done so, so far as I can.

Q. Then they are the same gentlemen, Mr. Kennedy, whose names you have just given here?

A. Yes, and others; I can't recall them all.

Q. And there were others included in the list, then?

A. I never saw a list, but it was talked about that the prin- 1448
cipal stockholders way back for many years, that they were getting old and might pass away, and in order to carry on the continuous policy of the company it might be well to keep the stock in one block.

Q. Those gentlemen had controlled the management, had they not, of the Great Northern road for many years?

A. I don't know what you mean by control.

Q. Well, they had had a majority of the stock, had they not?

A. I don't think they had a majority, but they had a con- 1449
siderable amount of it; I don't know whether it was a majority?

Q. Hadn't those gentlemen, Mr. Kennedy, dictated the policy of the Great Northern road for many years?

A. There wasn't any dictation about it; they were stockholders, and were working in harmony, and had a large holding in the property so far as we were shareholders, and had a right to vote; we voted and elected our directors.

Q. And you had voted together?

A. I always sent my proxy to Mr. Hill, and I suppose the others did the same. I had no knowledge on the subject.

Q. You are unable to state whether or not those gentlemen 1450
whose names you have mentioned there controlled or held a majority of the stock in the Great Northern or not?

A. I cannot say.

Q. Now, since 1889, Mr. Kennedy, so far as you know, had there been any opposition to the policy of the road as Mr. Hill had been conducting it? Had there?

A. No; so far as I know.

1451 Q. And Mr. Hill in connection with yourself and other persons whose names you have given here suggest the names of the directors?

A. No, sir; I never did.

Q. Didn't?

A. No, sir.

Q. There never had been any contest over any election of directors of the Great Northern road to your knowledge?

A. Not so far as I know.

Q. Was it the object and purpose of this securities com-
1452 pany to own and hold a majority of stock in the Great Northern as originally outlined?

A. There was no determination what it would be. The object was to offer the stockholders an opportunity to come in when the thing was first talked of some years ago; it was thought of forming a holding company to hold the stock of the principal holders, and I don't remember who, but it was suggested to offer every stockholder the same opportunity. The idea was to give them an opportunity to come in or not, just as they pleased?

Q. Do you mean to say, Mr. Kennedy, that the plan has
1453 matured so far as it related to the Great Northern road was concerned was to form this securities company and give every stockholder a chance to turn in his stock to the Northern Securities Company?

A. Yes; if he chose to do so.

Q. And to take in return therefor stock of the Northern Securities Company?

A. Yes, sir; that was not the original plan.

Q. I understand.

A. But as finally consummated.

Q. I don't mean as finally consummated, Mr. Kennedy, but
1454 up to the time when you and Mr. Hill first discussed the question of taking in the Northern Pacific, up to that time had you matured your plan to that point where you would allow all the stockholders of the Great Northern to come into the securities company?

A. I don't remember when that was determined; but it was finally determined to offer them that opportunity.

Q. Would there have been any object, as you understand it,

in having formed the Northern Securities Company merely for 1455
the purpose of having all of the stock of the Great Northern turned into that company? Would you simply have another company without any particular object?

A. I don't understand your question.

Q. As I understand you, Mr. Kennedy, the original proposition was to form a central company for the purpose of holding the shares of some of the old stockholders who had for many years acted in harmony and together?

A. Yes.

Q. That is correct, is it? 1456

A. Yes.

Q. Now, I want to know if, prior to the time when you had agreed upon a company for the purpose of taking in the Northern Pacific, you had agreed among yourselves not to allow all the stockholders of the Great Northern, if they saw fit to come in and turn in their stock to the Northern Securities Company and take stock therefor?

A. I can't tell when that thing was determined on, but it was determined on finally, as I have already told you, and gave an opportunity to all the stockholders to come in if they wished to do so. 1457

Q. Let me suggest this: Didn't they determine to give an opportunity for all the stockholders of the Great Northern to come in? Didn't that agreement on your part and your friends come up after you had made up your mind to take in the stockholders of the Northern Pacific? Isn't that the way that came about?

A. Well, I can't remember the time when it was done.

Q. Do you remember when the matter of taking in the Northern Pacific stockholders was first suggested?

A. I don't remember when it was first suggested.

Q. Approximately? 1458

A. It was some time in the autumn of last year.

Q. You at that time knew that Mr. Hill, yourself, and J. P. Morgan & Co., and these other gentlemen whom you have mentioned as your associates, you knew at that time that those gentlemen held a majority of the common stock of the Northern Pacific, did you not?

A. I didn't mention these gentlemen as my associates. You say that.

1459 Q. Well, I used Mr. Hill's language. I will call them Mr. Hill's associates.

A. Call them anything you like but my associates.

Q. All right, we will not dispute about that. (The question was read to the witness.)

A. I was so informed.

Q. Now, do you remember who suggested taking in the stockholders of the Northern Pacific?

A. I do not.

Q. Now, Mr. Kennedy, is it not a fact that in the autumn of 1901 Mr. Hill, J. P. Morgan & Co., D. Willis James, George
1460 F. Baker, Lord Strathcona, and Lord Mount Stephen held a majority of the stock of the Great Northern and of the Northern Pacific?

A. I can't speak as to a majority of the Great Northern; I don't think they hold a majority of the Great Northern; I am pretty sure they don't, but we did hold a majority of the stock of the Northern Pacific; at least, I was so informed.

Q. Now, at that time the suggestion came up of making a securities company, organizing a securities company for the purpose of carrying the stocks of you gentlemen in both roads,
1461 did it not?

A. Yes, sir.

Q. And later on it was decided to throw the privilege open to any and all stockholders of the Great Northern, was it not?

A. Yes, sir; I think that was it.

Q. It was the expectation and purpose of you gentlemen at that time, when you conceived the idea of organizing the Northern Securities Company, to acquire the stocks of both roads. I say it was your expectation and intention and purpose to have the new securities company acquire a majority of
1462 the stocks of both roads, the Great Northern and the Northern Pacific, was it not?

A. It was our intention to have a majority of the Northern Pacific, but as to the Great Northern, it was simply an intention to let the members in who chose to come in, and it remained to be seen whether it would be a majority or minority.

Q. Why did you plan on getting a majority of the Northern Pacific and not of the Great Northern, Mr. Kennedy?

A. Well, my idea was in consequence of what took place last May; we didn't want to be subject to such an attack as took place last year. 1463

Q. You wanted to have a majority of the stock of the Northern Pacific where you could absolutely control it?

A. Yes, sir.

Q. Under all circumstances?

A. Under all circumstances.

Q. And so far as the Great Northern road was concerned, it was regarded as practically certain to all intents and purposes that Mr. Hill, yourself, J. Pierpont Morgan, and George F. Baker controlled the Great Northern? 1464

A. I don't remember anything of the kind ever coming up.

Q. Mr. Kennedy, it was practically certain that Mr. Hill, yourself, and a few others controlled the Great Northern?

A. I suppose we had enough stock to have controlled an election if there had been no combination against us.

Q. You had no fears, Mr. Kennedy, that the Union Pacific nor the Canadian Pacific, nor any other railroad company could go into the market and buy up a majority of the Great Northern?

A. I don't remember thinking anything about it. 1465

Q. Well, why did you distinguish? You say you wanted a majority of the Northern Pacific where you could absolutely control it so as to prevent another such occurrence as that of May 9.

A. Yes.

Q. Weren't you equally anxious to prevent the possibility of such an occurrence with reference to the Great Northern?

A. I think those who were called Mr. Hill's associates had enough stock to prevent anything of that kind.

Q. That is what I am getting at, so that when you planned absolutely to hold a majority of the Northern Pacific and have that turned into the securities company, and to turn in the stock of yourself and Mr. Hill's associates in the Great Northern, you knew that you were controlling enough stock of the Great Northern so it could not be purchased by a rival interest? 1466

A. I don't know that absolutely.

Q. You felt pretty certain of it?

A. I thought it was probable.

1467 Q. You were just as anxious to prevent an attempt to buy up a majority of the Great Northern by a rival interest as you were to prevent an attempt to buy up a majority of the Northern Pacific, weren't you?

A. I didn't want an attack in either case.

Q. That is what I am getting at—that is, a purchase by a rival interest of a majority of the stock of either the Great Northern or the Northern Pacific was a thing which you were trying to prevent, was it not?

A. Yes, sir; that was our idea; at least, that was my idea; I speak for myself.

1468 Q. And wasn't that idea discussed, Mr. Kennedy, between you and Mr. Hill and others at the time of the organization of the Northern Securities Company?

A. I have no recollection of any discussion on that point.

Q. You say you had that idea; didn't you discuss that matter with Mr. Hill?

A. No; I don't remember any discussion of it.

Q. Didn't you hear any reference made by any of your friends, or by Mr. Hill's associates with reference to the object and purpose of preventing another attack on either the

1469 Great Northern or the Northern Pacific?

A. I remember that being talked of in connection with the Northern Pacific, but I have no recollection of it in connection with the Great Northern.

Q. It was a fact, Mr. Kennedy, that so far as your own feelings went you were perfectly satisfied that a successful attack could not be made on the Great Northern?

A. I was satisfied of this, that if we held the controlling majority of the stock of the Northern Pacific the chances were remote that they would make an attack on the Great Northern.

1470 Q. Now, it was finally determined, Mr. Kennedy, after it was decided to take in a majority or more of the stock of the Northern Pacific, to throw open the privilege to all the stockholders of the Great Northern to go into the Northern Securities Company?

A. Yes, sir.

Q. And was that done for the purpose of placing a majority of the stock of the Great Northern in the Northern Securities Company, as well as a majority of the Northern Pacific?

A. I think not. The idea was to give the Great Northern 1471
stockholders who might desire to come in an opportunity to come in, that they might not feel that they were not fairly treated if certain persons went in and other persons left out.

Q. Now, you gentlemen, Mr. Morgan, Mr. Hill and his associates, and yourself, at the time you conceived and agreed upon the plan of organizing the Northern Securities Company, agreed among yourselves to turn in a majority of the stock of the Northern Pacific into the securities company, did you not?

A. I don't remember of any special agreement made on that subject. I think it was understood they would turn it in. 1472

Q. So as to place a majority of the Northern Pacific absolutely in the Northern Securities Company?

A. Yes, sir; that was my idea.

Q. And so far as you know that was the idea of the other gentlemen associated with you?

A. I suppose it was. I have no information on that point.

Mr. Stetson. Northern Pacific common or preferred, or what?

Q. Common. Was it the purpose or intention of you gentlemen at the time you organized the Northern Securities Company to place the stock of that company upon the market 1473
for miscellaneous purposes?

A. I don't remember that being suggested or discussed.

Q. Was it the object or purpose of the Northern Securities Company—that is, was it talked over and agreed among you gentlemen that the Northern Securities Company was to acquire other stocks beside the Great Northern and Northern Pacific?

A. That was spoken of as a possibility.

Q. But the primary object and purpose was to acquire the stocks of the Great Northern and Northern Pacific? 1474

A. That was the first object.

Q. And that was practically the only object that was discussed, wasn't it, Mr. Kennedy, at that time?

A. Well, there were discussions about what might take place afterwards in regard to other properties, but nothing definite was arrived at; but such things were suggested as a possibility.

1475 Q. You were a director, Mr. Kennedy, of the Northern Securities Company?

A. Yes, sir.

Q. And you stated, but I have forgotten, when you were elected; I think in November?

A. I think it was some time in November.

Q. Have you attended the meetings of the board of directors of the Northern Securities Company since its organization?

A. I attended one meeting of the directors.

Q. And only one?

1476 A. Only one of the directors; possibly two meetings of the executive committee.

Q. Are you a member of the executive committee?

A. Yes, sir.

Q. How much stock of the Great Northern Railway Company has been turned in and exchanged for the stock of the Northern Securities Company?

A. I don't know.

Q. You know approximately, don't you?

A. No, sir; I don't.

1477 Q. Well, do you know whether it is 50,000,000, or 75,000,000?

A. It would be a mere guess; I don't know.

Q. Well, have you turned in all of your stock, Mr. Kennedy?

A. Yes, sir.

Q. And when?

A. I turned it in shortly after the formation of the company.

Q. And you had at that time 96,000 or so?

A. About 96,000 of the Great Northern and 40,000 of the

1478 Northern Pacific.

Q. Do you know, Mr. Kennedy, how much of the Northern Pacific stock, the common, has been turned in in exchange for Northern Securties Company?

A. Only by hearsay; I understand about 150,000,000 out of 155,000,000.

Q. Haven't you heard anything about the number of shares of the Great Northern turned in?

A. No, sir. 1479

Q. Haven't you made any inquiry?

A. No, sir; I have been out of town. I have not been in the office for the past four weeks.

Q. Was there a large amount of stock of the Great Northern turned in immediately after the organization of the securities company?

A. I don't know how much was turned in. I turned in mine, and I heard that others had turned in stock, but how much I do not know.

Q. Is it a fact that that stock, yours and your friends', was turned in immediately after the organization of the company? 1480

A. I don't know how soon it was. I turned mine in very soon after the organization of the company.

Q. Has there been any stock of the Great Northern road turned into the Northern Securities Company since the 31st day of December, 1901?

A. I don't know.

Q. Have you ever attended a meeting of the executive committee where it was decided and determined not to receive stock of the Great Northern? 1481

A. I have no recollection of such a matter being suggested at any meeting I have attended?

Q. Has it ever come to your knowledge, Mr. Kennedy, that the stock that has been offered by holders of the Great Northern has been turned in in blank?

A. I know nothing whatever about that.

Q. Do you know of any stock of the Great Northern road being held by people outside as trustees of the Northern Securities Company?

A. No, sir; I never heard of such a thing.

Q. Mr. Kennedy, are you able to state, of your own knowledge, that a man holding Great Northern stock can go to the Northern Securities Company to-day and turn in his stock at $1.80 and get stock of the Northern Securities Company? 1482

A. I don't know, sir, whether he can or not. I think, in a circular that was issued, a time limit was put on it. Whether that has been extended or not I don't know.

1483 Q. How long has it been since you attended a meeting of the executive committee?

A. It must be more than a month ago. I left the city on the 19th of February, and I have not been to the company's office since, nor attended any meetings since.

Q. Mr. Kennedy, up to the time of the last meeting, did you know that the stock which had been turned in or offered, all stock which had been offered by holders of the Great Northern, had been received by the securities company, and held by the securities company; do you understand what I mean?

1484 A. No; I don't understand what you mean.

Q. I suppose, Mr. Kennedy, the stock which you yourself turned in was indorsed to the Northern Securities Company, was it?

A. Yes, sir; I transferred it to them.

Q. Now, the other stock, as you understood it at the time, that was turned in immediately on the organization of the company was transferred by the holders direct to the Northern Securities Company?

A. I suppose so.

Q. Now, I want to know if up to the time of the last meet-
1485 ing, which you say was about a month ago, which you attended——

A. No; I said I went out of the city a month ago, and I do not remember when the last meeting previous to that time was. I think it must have been one or two weeks before.

Q. Well, up to the time of the last meeting that you attended, had the stock which had been tendered to the Northern Securities Company, by different holders, been indorsed direct to the securities company?

A. I don't know that, sir; I know nothing about it. I have no knowledge of that matter and know nothing about it.

1486 Q. Mr. Kennedy, did you have anything to do, as a member of the board of directors or as a member of the executive committee, with electing some of the vice-presidents for the purpose of transferring the stock or issuing stock?

A. I remember there were certain persons appointed to sign certificates of stock, but I cannot recall the names. I remember it came up. I think at a meeting of the executive committee.

Q. Do you remember how many you appointed? 1487

A. I do not remember, but I remember there were some appointed in case they might be needed and I think they were never used.

Q. Were there four appointed?

A. I do not remember.

Q. But you do remember the fact that there were some gentlemen appointed?

A. Yes, sir.

Q. Simply to issue stock?

A. To sign certificates.

Q. Do you know, Mr. Kennedy, that stock has been turned in and delivered to the Northern Securities Company in blank and without being indorsed and the stock of the Northern Securities Company issued in payment for it? 1488

A. I have no knowledge of it and never heard of such a thing.

Q. And you are not aware that any such stock to any amount has ever been turned in by anybody and so held by the Northern Securities Company?

A. No, sir; I never heard of such a thing.

Q. Do you know, Mr. Kennedy, whether or not there are any outsiders holding Great Northern stock which in reality belongs to the Northern Securities Company? 1489

A. I do not, sir.

Q. Did you have anything to do with the purchase of the Northern Pacific common made by Mr. Hill of J. P. Morgan & Co. in November or December of last year?

A. No; nothing to do with that.

Q. Did you know, Mr. Kennedy, of Mr. Hill's purchasing some eleven or twelve millions of the Northern Pacific Company of J. P. Morgan & Co.?

A. I remember his telling me he had purchased a block of stock, but I do not remember the amount. 1490

Q. Was it not somewhere in the neighborhood of ten or twelve millions?

A. I really cannot remember.

Q. But you had nothing to do with that?

A. Nothing to do with it.

Q. And took no part in it?

1491 A. I told you I took 10,000 shares; that is all the stock I took.

Q. That was earlier, was it not?

A. That was in August. What was purchased since then I know nothing about.

Q. You purchased no other stock of the Northern Pacific from August to the present time?

A. No, sir; not a single share. Well, I will not say that. Of course I got my share of the certificates that were issued to the common stockholders. I got that, certainly, if you call that a purchase, but I purchased no stock in the market.

1492 Q. At the time of the retirement of the Northern Pacific preferred you took advantage of the subscriptions offered to holders of the common?

A. Yes, sir; I did.

Q. And you turned in those certificates directly to the Northern Securities Company, and took your stock from the Northern Securities Company?

A. No; my recollection is that I turned them into the Great Northern Railroad Company, and took the certificate of stock and transferred that.

1493 Mr. Stetson. You mean the Northern Pacific?

A. Yes; I mean the Northern Pacific, and then turned the stock into the Northern Securities Company.

Q. Was the stock of the Northern Pacific Company actually issued to you, Mr. Kennedy, personally?

A. My recollection is it was.

Mr. Lancaster. Was that uniformly done, Mr. Stetson?

Mr. Stetson. I think so. I do not know. This was a stockholders' transaction, and I do not know anything about it.

Q. Well, so far as your recollection goes, Mr. Kennedy, you would state that the Northern Pacific Company issued to you

1494 your proportionate share of the new issue of common stock?

A. They issued my proportionate share of certificates of indebtedness, which were convertible into common stock.

Q. Now, did they issue the common stock?

A. My recollection is that I surrendered those and got the common stock, and I sold that to the Northern Securities Company and got their certificates for it.

Q. So, originally, your proportionate share of common stock 1495
was issued to you personally?

A. That is my recollection.

Q. And turned in by you to the Northern Securities Company?

A. Yes, sir.

Q. And in return therefor you received your proportionate share of the new stock of the Northern Securities Company?

A. That is the transaction as I remember it.

Q. Mr. Kennedy, were you consulted by Mr. Hill with reference to the purchase of Mr. Harriman's stock, or the stock 1496
held by the Union Pacific or the Oregon Short Line, in the Northern Pacific?

A. I was not.

Q. Did you know anything about such purchase?

A. No; nothing whatever about it.

Q. Did you know anything about any agreement between Mr. Hill or his representative and Mr. Harriman or Kuhn, Loeb & Co. with reference to the disposition of the common stock held by Mr. Harriman?

A. I knew nothing at all about it.

Q. Did you know anything about the purchase by Mr. Mor- 1497
gan of any of the Harriman stock in the Northern Pacific?

A. All I remember is hearing—I don't know whether from Mr. Hill or J. Pierpont Morgan—that that interest had agreed to turn in their stock; but that is all I know about it and all I remember about it.

Q. Had agreed to turn it into what?

A. I think to turn it in to J. P. Morgan & Co. I think it was sold to J. P. Morgan & Co., as I remember it.

Q. So that you did know, during the summer or fall of 1901, that the Harriman interests were to dispose of their holdings in the Northern Pacific to J. P. Morgan & Co.? 1498

A. I remember hearing something said about it; but that is all. I knew nothing about it, except that they had turned their stock in to J. P. Morgan & Co.

Q. Didn't Mr. Hill confer with you about financing or assisting in financing that transaction?

A. No, sir; he never consulted me, nor said anything with

1499 regard to it. He may have mentioned the matter casually, but I have no recollection of it.

Q. Did you know how much of the common stock of the Northern Pacific Mr. Harriman had?

A. I remember hearing that he, or parties whom he represented, had about $37,000,000 of the common stock; I think a fraction over.

Q. And that common stock, you understood, was to be taken by J. P. Morgan & Co.?

A. I have no recollection what was to be done with it, except I understood arrangements had been made with J. P.
1500 Morgan & Co.

Q. Now, you returned from Europe June 8, you stated?

A. Yes, sir; that is my recollection; the second Saturday in June. I think it was the 8th.

Q. Were you present at a meeting of the board of directors of the Northern Pacific, held on July 23, 1901?

A. I was not, sir; I was not in the city then, as I have already told you.

Q. Were you consulted with reference to the resignations which took place at that time, July 23, 1901?

1501 A. No, sir; I was not.

Q. You know, as a matter of fact, there were four or five resignations on the board?

A. Yes; of course I knew that.

Q. And you were consulted with reference to who should be put on in place of those men?

A. No, sir; I was not.

Q. You had nothing whatever to do with the substitution or election of the new men?

A. Nothing whatever.

Q. When did you first learn that Mr. Harriman was put on
1502 the board?

A. I first saw it in the newspapers.

Q. Did you attend the annual meeting of the Chicago, Burlington and Quincy Railroad Company at the last annual meeting?

A. No, sir; I did not—not the Chicago, Burlington and Quincy Railroad Company.

Q. Railway Company?

A. I was not aware that they had had an annual meeting. If 1503
they had, I had not heard of it.

Q. I guess that is so; that is the new company. Did you have anything to do with suggesting the name of Mr. Harriman for a director on the Chicago, Burlington and Quincy Railway Company?

A. No, sir; nothing whatever.

Q. Do you know how he happened to be placed on the board?

A. I do not know.

Q. Do you know how he happened to be placed on the board of the Northern Pacific on July 23, 1901? 1504

A. I do not know, except I believe he was nominated by Mr. Morgan. I think there was some understanding that Mr. Morgan was to constitute the board, after the troubles of last May, and in nominating some new members of the board he named Mr. Harriman as one of them. That is all I know about it.

Q. Did Mr. Morgan nominate him for a director of the Chicago, Burlington and Quincy Railway Company?

A. I don't know.

Q. You don't know how he came to be nominated there? 1505

A. I do not.

Q. He was not a large holder in the Chicago, Burlington and Quincy, was he?

A. I do not know what he holds.

Q. As a matter of fact, the Northern Pacific and Great Northern holds all the stock of the Chicago, Burlington and Quincy Railway Company, don't it; they were the joint owners of all the stock of that company?

A. Whatever stock was issued, I believe they were the joint owners, but I know nothing about the details.

Q. You did not understand that Mr. Harriman was interested in any way, shape, or manner in the Burlington road? 1506

A. I don't know what his interest is.

Q. Well, you understood, Mr. Kennedy, that the Chicago, Burlington and Quincy Railroad Company—that all of that stock had been put up and was placed as collateral to the joint bonds of the Northern Pacific and the Great Northern Railroad in the hands of the Central Trust Company?

1507 A. I understand that a large majority was put up and placed in the hands of the Standard Trust Company——

Q. That is right——

A. And ajoint bond was issued by the two companies, the Northern Pacific and Great Northern, in payment.

Q. When you say a large majority, you mean 98 or 99 per cent?

A. I do not know what the percentage is, but practically the whole of it.

Q. Did you understand that Mr. Harriman held any of the
1508 balance of the 1 or 2 per cent?

A. I had no knowledge on the subject.

Q. You knew that Mr. Harriman was made a member subsequent to May 9, 1901, of the Chicago, Burlington and Quincy Railroad Company, too?

A. I was not aware of that.

Q. Didn't you know that Mr. Schiff was also made a member of the board of directors of the Chicago, Burlington and Quincy Railroad Company?

A. I think he is a member of that board.

Q. And did you know that Mr. Mortimer L. Schiff was also
1509 a member of the board of directors of the Chicago, Burlington and Quincy Railway Company?

A. Yes, sir.

Q. And knew he was the son of Jacob H. Schiff?

A. Yes, sir.

Q. Do you know of your own knowledge how either Mr. Harriman or Mr. Schiff, Mortimer or Jacob H., came to get on those boards?

A. I do not.

Q. You don't know that either one of them held any stock in either of the roads?

1510 A. I know nothing on that subject whatever.

Q. You knew that Mr. Harriman was a member of the board of directors of the Northern Securities Company?

A. Yes, sir.

Q. And also Mr. Jacob H. Schiff?

A. Yes, sir.

Q. Did they turn the Northern Pacific common in exchange for the stock of the Northern Securities Company?

A. I don't know what they turned in. 1511

Q. Do you know whether or not they were stockholders of the Northern Securities Company?

A. I think they must be, or they would not be on the board of directors.

Q. Do you know whether they held merely enough to qualify or are large holders?

A. I don't know.

Q. Were you consulted with reference to their being on the board?

A. No, sir. 1512

Q. Don't know about them being placed on the board?

A. I think at the time the board was elected the list was submitted to me of the names to be on the board, and their names were on that list.

Q. Who submitted the names to you?

A. As near as I remember, I think it was Colonel Clough. I won't be certain; I think it was.

Q. Did you make any inquiries as to why Mr. Harriman or Mr. Schiff were on that board?

A. No, sir.

Q. You didn't understand that either one of those gentle- 1513
men were interested in the Northern Pacific, did you?

A. As an impression, I would say my impression was that they were interested in the Northern Securities Company through stock that had either belonged to them, or a portion belonged to them, that had been transferred to the Northern Securities Company, but I don't know; I have no knowledge on the subject.

Q. Didn't Mr. Harriman sell his stock to J. P. Morgan & Co. in the Northern Pacific in the fall previous?

A. I understood he had, or the greater portion of it.

Mr. Stetson. You are continually referring to the summer 1514
and fall. Ask Mr. Kennedy the direct question whether he knows the time.

Q. Do you know the time, Mr. Kennedy, when Mr. Harriman sold his stock in the Northern Pacific to J. P. Morgan & Co.?

A. I do not.

Q. Approximately?

1515 A. I think it was some time in the autumn last year.

Q. Did you understand, Mr. Kennedy, that at the time the Northern Securities Company was organized, and this board of directors, and this list submitted to you by Mr.—Colonel Clough——

A. Or whoever it was——

Q. I know, but you suggested him.

A. I qualified that.

Q. Do you know whether or not at that time Mr. Harriman was the owner and holder of any stock in the Northern Pacific
1516 Railway Company?

A. He must have been a holder of stock, because he was a director.

Q. I mean anything more than to qualify as a director.

A. That I don't know.

Q. Did you know wether or not Jacob H. Schiff held or owned any stock in the Northern Pacific Railroad Company?

A. I don't know that, either.

Q. Now, Mr. Kennedy, was not there some explanation given to you as to why E. H. Harriman and Jacob H. Schiff were submitted on that list to you as directors in the North-
1517 ern Securities Company?

A. I have no recollection of anything being said to me about it.

Q. You do not remember anything being said?

A. No, sir; except they were suggested as directors.

Q. Did you know that there had been any understanding or agreement with reference to the Union Pacific and the Great Northern and the Northern Pacific and the Burlington with reference to the division of territory, etc.?

A. No, sir.

Q. Didn't you ever hear from your associates or from any
1518 source that any such understanding had been reached?

A. No, sir; I know nothing whatever about it.

Q. Well, in this list that was submitted to you, the name of James J. Hill appears?

A. Yes.

Q. He was a large stockholder, and had been for many years, in the Northern Pacific and Great Northern?

A. Yes, sir; I believe so.

Q. And in that list, John S. Kennedy—that is yourself? 1519

A. Yes, sir.

Q. You had always been a large owner in the stocks of both roads?

A. Yes.

Q. George F. Baker was also on that list?

A. Yes, sir.

Q. He had been a large owner and holder of stock in both roads?

A. I don't know about the Great Northern, but he had been in the Northern Pacific.

Q. And D. Willis James had also been a large holder? 1520

A. Yes.

Q. And you understood that George W. Perkins and Robert Bacon were both members of the firm of J. P. Morgan & Co.?

A. There is a Mr. Perkins and a Mr. Bacon, both members of that firm.

Mr. Lancaster. It is conceded, is it not, that G. W. Perkins is a member of the firm of J. Pierpont Morgan & Co.?

The Witness. I don't know his initials.

Mr. Stetson. There is a firm of J. P. Morgan & Co., but not J. Pierpont Morgan & Co. 1521

Q. You understood at that time that both Mr. Perkins and Mr. Bacon were members of the firm of J. P. Morgan & Co.?

A. Yes.

Q. And that J. P. Morgan & Co. were large holders and owners of Northern Pacific stock?

A. I supposed they were.

Q. You knew Samuel Thorne?

A. Yes.

Q. Was he an owner and holder of stock of the Northern Pacific and Great Northern?

A. I don't know about Northern Pacific. He was in the 1522 Great Northern.

Q. And Daniel S. Lamont?

A. I don't know whether he held stock in the Great Northern, but he did in the Northern Pacific.

Q. Colonel Clough?

A. I don't know about his holding. He was a stockholder in the Great Northern for years.

1523 Q. And Mr. Lamont had been identified with the Northern Pacific?

A. Yes, sir.

Q. And James Stillman—who was he?

A. President of the City Bank. I supposed everybody knew him.

Q. No; I don't know him. Was he a stockholder, Mr. Kennedy?

A. He must have been a stockholder of the Northern Pacific, because he is a director. What his holdings are I know nothing about.

1524 Q. He had been a stockholder of the Northern Pacific Railway Company?

A. He must have been, because he was director from the time of reorganization and since.

Q. He has been actively identified with the Northern Pacific for several years?

A. I don't know whether he has been or not. He has been a director; that is all I know.

Q. At the time when this list was shown to you it contained names of men who had been to a greater or less extent

1525 identified as directors or large stockholders in both the Northern Pacific and Great Northern, except Jacob H. Schiff and E. H. Harriman?

A. I don't know whether the others were largely connected with both roads or not. I don't think you have mentioned all the names.

Q. Nicholas Terhune. I find he is a transfer agent of the Great Northern Railway Company.

A. Yes, sir.

Q. I never heard of him before, and I find that counsel of the Northern Pacific never did so. I conclude that he has not

1526 been very active with either of them?

A. I don't know.

Q. Do you know who he is?

A. He is transfer agent and holds some official position in the Great Northern office.

Q. I think I have named them all, Mr. Kennedy, except E. H. Harriman and Jacob H. Schiff, and I say that all of those men had been either actively identified with the Northern

Pacific or Great Northern in its management or had been large stockholders in those roads, excepting those two men. 1527

A. Mr. Schiff was a large stockholder in the Great Northern, and was, at the time you refer to, a director in the Great Northern.

Q. Did you know what time he resigned?

A. I do not know that he ever resigned, but at the last election his time had expired and somebody else was elected in his place—last autumn.

Q. He was a director, then, up to the time——

A. Of the last election, and had been for some time previously. 1528

Q. I omitted George C. Clark. Do you know who he is?

A. Yes. He is Mr. Clark of the firm of Clark, Dodge & Co., bankers.

Q. Was he an owner and holder of stock in either road?

A. I don't know; I suppose he was, but I don't know.

Q. You don't know anything about that?

A. I do not.

Q. Well, you understood that at the time you saw this list here of names proposed, including Mr. Harriman and Mr. Schiff, that there was a complete understanding between the rival interests of the Union Pacific on one side and the Great Northern and Northern Pacific and Burlington on the other? 1529

A. I had no information on the subject.

Q. And you made no inquiry?

A. No.

Q. You accepted the list as all right, without making inquiries?

A. Yes, sir; I accepted it as all right, and that they were the men to be elected, and that it was all right.

Q. You say that Mr. Schiff had been a director of the Great Northern for some years? 1530

A. I think for two or three years. I think the directors are elected for three years, one-third each year. I think he had been a director for three years and that his term expired last autumn.

Q. You knew Mr. Schiff's and Mr. Hill's relations were somewhat unfriendly at that time, didn't you, in the autumn of 1901?

1531 A. I don't know.

Q. Don't you know that their relations had become strained, and badly so?

A. I don't know. Mr. Hill, I believe, dined with Mr. Schiff a while ago. A man would not invite another to dine at his house if they were not friendly.

Q. I am not referring to their making up. I am referring to last fall, and ask you if you know that their relations were not somewhat strained?

A. Yes, sir; I do. I think there had been some friction be-
1532 tween them.

Q. Mr. Schiff was a member of Kuhn, Loeb & Co.?

A. Yes, sir; I think he is the senior member of that firm.

Q. And you understood that Kuhn, Loeb & Co. had attempted the purchase of the Northern Pacific stock for Mr. Harriman?

A. I don't know that. I was not here, I told you. I was not here and know nothing about it.

New York, Thursday Afternoon, March 28, 1902.

1533 JOHN S. KENNEDY, being recalled in behalf of the defendant, testified as follows, in answer to questions by Mr. Kellogg:

Q. Mr. Kennedy, referring to your testimony as given by you on direct examination, you stated in substance that Mr. Hill, Mr. Baker, D. Willis James, Lord Mount Stephen, and Lord Strathcona purchased in the neighborhood of 26,000,000 of Northern Pacific stock. Did you mean that those four gentlemen purchased the whole 26,000,000?

A. No, sir; I think I said "about." I could not tell the
1534 amount of that block of stock, but I understood that these gentlemen, with others, united in purchasing that stock.

Q. Now, did they unite in a joint purchase, or did each one buy the stock for himself?

A. Oh, each one for himself.

Q. That is, each one bought it separately?

A. I bought mine for myself, and paid for it, and nobody else.

Q. It was an individual holding and not a joint holding? 1535

A. Yes, sir; an individual holding. Not a joint holding.

Q. On page 218 of your testimony as paged in the copy that I have, referring to this same Northern Pacific stock which you purchased, your answer is, in substance, that you may have sold a little, and your answer is as follows. "I held the greater part of it. I sold a little of it some time after, but by far the larger portion I held right along and hold it now."

A. I meant I held it till I sold it to the Northern Securities Company.

Mr. Bulkley. I think he explained that afterwards.

Mr. Kellogg. No; I read it carefully and he didn't explain 1536 it.

Mr. Boutelle. I think he said he turned it all in to the Northern Securities Company.

Mr. Kellogg. I guess he intended to say that.

Q. Did you hold any stock in the Northern Pacific jointly with anybody else, or did you have any agreement or understanding with anybody as to how you should handle or sell or vote your stock in the Northern Pacific?

A. No, sir; never did.

Q. So far as you held and these other gentlemen, do you know whether they held theirs individually or as joint pur- 1537 chases?

A. I don't know, but I suppose as an individual purchase.

Q. Well, as far as you know, was there any agreement between these gentlemen in their Northern Pacific purchases that they should act together, or sell together, or vote together, or handle it together in any way?

A. There was none on my part. I never heard of any agreement of that sort with anybody.

Q. You referred to the holdings of the company occasionally when you referred to the Northern Securities Company. 1538 Did you mean simply to hold stocks or to own it?

A. To own it.

Q. In the transfer or sale of your stock to the Northern Securities Company you sold it absolutely, did you?

A. I sold it absolutely to the Northern Securities Company.

Q. You have no control over it?

1539 A. No control over the stock. I have over the Northern Securities Company stock, of course, but not over the stock that I sold them.

Q. The stock that you received from the Northern Securities Company you own yourself?

A. Individually; yes.

Q. Have you any agreement or arrangement as to how you shall vote or handle that?

A. None whatever. Never heard such a thing suggested.

Q. You stated in your direct examination that the stock-
1540 holders of the Great Northern Railway Company acted in harmony. What do you mean by that?

A. I mean by that that, that so far as I am aware, there never was any question at an election, or any question ever came up or a difference between the different stockholders; at every annual meeting when an election was held that the stockholders were perfectly harmonious.

Q. They were satisfied, were they, with the management of Mr. Hill?

A. Satisfied with the management of Mr. Hill.

Q. In referring to the stock that you bought of J. P. Mor-
1541 gan & Co., at the suggestion of Mr. Hill, the 10,000 shares, did you buy that individually for yourself or did some one else have an interest in it?

A. I bought it for myself.

Q. The same answers would apply to that——

A. No one had any in it whatever except myself.

Q. On page 229 of the testimony, in stating one of the purposes of the securities company, you said it was simply to hold the stock which some of the principal stockholders held in one block. Did you mean by that that the securities company was to hold it in one block or the principal stockhold-
1542 ers of the Great Northern held it in one block?

A. I don't remember saying that, but what I undoubtedly meant was that they were the large shareholders in the Great Northern Railroad, and so far as I know had always sent their proxies to Mr. Hill, and they were agreed to put their stock into this securities company.

Q. You did not mean by that that the large shareholders of

the Great Northern held their stock together by any commu- 1543
nity of interest?

A. No, sir.

Q. On pages 233 and 234 of the testimony this question was asked you, Mr. Kennedy:

"Now, Mr. Kennedy, is it not a fact that in the autumn of 1901, Mr. Hill, J. Pierpont Morgan & Co., D. Willis James, George F. Baker, Lord Strathcona, and Lord Mount Stephen held a majority of the stock of the Great Northern and Northern Pacific?

"A. I cannot speak as to a majority of the Great Northern; 1544
I don't think they held a majority of the Great Northern. I am pretty sure they don't; but we did hold a majority of the stock of the Northern Pacific; at least, I was so informed."

Did you mean that those gentlemen held a majority of the Northern Pacific?

A. Not those gentlemen, but others who were friends of Mr. Hill; who they all were I don't know.

Q. That was the common stock?

A. The common stock.

Q. You didn't mean the total stock?

A. No, no; the common stock. 1545

Q. Did you understand that the formation of the securities company was in any way conditioned upon its acquiring a majority of the stock of both railroad companies?

A. No, sir; no such condition.

Q. Well, was it or was it not decided to form it whether it procured——

A. Whether it procured a majority or whether it did not.

Q. Was there ever any agreement, so far as you know, between the stockholders of the Northern Securities Company that any set of men, so far as you know, were to control the Northern Securities Company? 1546

A. I never heard of such a thing.

Q. Or any control over it other than comes through a majority of the ownership of the stock?

A. That is the only way. Each man owns his own stock and can do as he likes with it.

Q. Did you know of any agreement between the majority stockholders of the Northern Pacific Company that they

1547 would all turn their stock in or sell it to the Northern Securities Company?

A. I know of no such agreement; never heard of it.

Q. So far as you know, did or did not the stockholders act individually as they saw fit?

A. They all acted individually.

Q. In selling their stock to the Northern Securities Company?

A. Certainly; I did, I know, and I suppose all the others did the same.

1548 Q. When you say that Mr. Hill, yourself, and a few others had Great Northern stock enough so that by acting together an election could be controlled, or might prevent an adverse combination, do you mean by that that you owned stock enough to vote a majority of the Great Northern stock, you and Mr. Hill and your friends?

A. No, sir; I did not mean that.

Q. What did you mean?

A. I meant that the affairs of the company had always been conducted harmoniously. I never heard of any trouble at any election, and Mr. Hill and the other gentlemen you have

1549 named and myself had such a large amount of stock that it would be very apt to control any election, unless some hostile parties came in and were successful in securing the balance of the stock, which constituted a majority.

Q. Do you know whether the Great Northern stock was what you would call a speculative stock that changed hands rapidly or not?

Mr. Boutelle. That is objected to as not proper cross-examination and immaterial.

A. No, sir; it was not a speculative stock.

Q. Now, in the organization of the Northern Securities

1550 Company, or previous to the organization of the Northern Securities Company, was there any question made or any discussion that that company was organized for the purpose of acquiring a majority of the stocks of both those railroads for the purposes of maintenance of rates, railroad rates, suppression of competition, or controlling competition or commerce on those roads?

Mr. Boutelle. Objected to as not proper cross-examination 1551
and incompetent, irrelevant, and immaterial.

A. I have never heard of such a thing. I never heard such a thing suggested in any quarter whatever.

Q. Do you know whether a majority of the stockholders of each of those companies, the Great Northern and Northern Pacific, ever got together and agreed to form the Northern Securities Company? Did you ever hear of anything of that kind?

A. I never heard such a suggestion. I never heard of such a meeting. I don't believe, so far as I can judge, I ever heard 1552
of any such meeting having taken place.

Q. Or any agreement between them?

A. Or any agreement between them.

Q. State whether the organization of the Northern Securities Company had any relation to or anything to do with the retirement of the preferred stock of the Northern Pacific.

A. Nothing whatever.

Q. Do you know whether it had any relation or anything to do with the purchase of the Harriman stock?

A. Not so far as I know. I believe it had not, and never heard of such a thing. 1553

Q. Do you know whether Mr. Hill had anything to do with the retirement of the Northern Pacific preferred stock?

A. Not so far as I know.

Q. Was the retirement of the Northern Pacific preferred stock undertaken for the purpose of giving the Northern Securities Company an opportunity to acquire the majority of the common stock of the Northern Pacific?

A. It was not.

Q. Was the retirement of that stock a part of any scheme or plan to allow the Northern Securities Company, or anyone else, to obtain a control of the majority of the Northern Pa- 1554
cific stock?

A. No, sir.

Q. Well, what did you understand had been the understanding about the Northern Pacific preferred stock from the time of its issue?

Mr. Boutelle. Objected to as immaterial, not proper cross-examination, irrelevant, and incompetent.

1555 A. I understood at the time the Northern Pacific was reorganized there was some question about issuing bonds or stock, and it was finally arranged to issue preferred stock with the right of redemption on the part of the company at any time—I think, for twenty years—on any 1st of January, either in whole or in part.

Q. Now, that voting trust was dissolved about what time?

A. I think it was about the beginning of last year, as near as I remember.

Q. And the annual meeting of the Northern Pacific was in what month? Do you remember?

1556 A. The annual meeting was, I think, early in October.

Q. Why was the directors' meeting which passed the resolution for the retirement of the preferred stock held on the 13th of November, 1901? Do you know?

A. That is the regular meeting day. I think the by-laws provide that the board shall meet on the second Wednesday of every month, and I think that was the regular meeting day.

Q. Was that the first meeting after the election?

A. Yes; I believe that was the first meeting after the election. There was no meeting held in October because it was

1557 found they could not get a quorum, so that was passed over, and the first meeting after the election was held the second Wednesday in November. I don't remember the date, but I think it was the 13th.

RE-DIRECT EXAMINATION.

By Mr. Boutelle:

Q. Mr. Kennedy, when you speak of a number of parties who had acted harmoniously with Mr. Hill for a number of years past in connection with the affairs of the Great North-

1558 ern road, do you refer to the parties whom Mr. Hill mentioned and to whom your attention was called on your direct examination—yourself, Mr. Baker, Lord Strathcona, Lord Mount Stephen, Mr. D. Willis James, Oliver Payne, and H. W. Cannon?

A. I am referring to the stockholders as a whole, not to a few, or those you have named, some of whom I do not know; but I refer to the stockholders as a whole.

Q. Was it a fact, Mr. Kennedy, that those parties whom I 1559
have mentioned had acted for years together in the affairs of the Great Northern road?

A. I can only answer you by saying that every meeting, so far as I can remember, when I was in this country, I sent my proxy to Mr. Hill. I had full confidence in him and his management, and I think I testified the other day when I was up that I believed the other stockholders who had a large majority did the same.

Q. You testified on your direct examination that a number of the holders of Great Northern stock who had always acted 1560
in harmony had talked over for a number of years the plan and scheme of organizing a securities or holding company. Now, whom do you refer to as those parties?

A. I think my testimony was I had talked with Mr. Hill, I don't remember. I would like to have it read to me if I made such an answer.

Q. Was your familiarity, or understanding, or conference in respect to the organization of a securities company when it was first brought up confined to your talks with Mr. Hill?

A. So far as I remember my talks were with Mr. Hill. I may have explained to Mr. James or to some other gentlemen 1561
about it. So far as I can recollect now I can only recall conversation with Mr. Hill about it.

Q. Well, you understood at that time, did you not, who those parties were that were going into that holding or securities company?

A. I did not, except I believed Mr. Hill's friends, the gentlemen you have named, and possibly others.

Q. On your direct examination, as I recall it, you testified, in substance, that the original plan contemplated taking in a number of gentlemen who had always acted together and in
harmony into this holding company, and that afterwards the 1562
plan or scheme was enlarged so as to give all stockholders equal opportunity.

A. I believe I testified substantially that.

Q. Now, you must have had in mind at the time that the original plan of forming a securities company was talked over certain parties who were to go into that?

A. Well, in talking with Mr. Hill I always took it for

granted that some of the gentlemen you have named—and some you have named I don't know—were willing to go into such an organization.

Q. So that it was generally understood between all of you when this plan of forming a securities company was organized that those were the parties that were to go in?

A. Those were some of them.

Q. Now, were those the same parties who made the purchase of the $26,000,000 from the Northern Pacific at the time that the latter road was organized?

A. That I can not tell you, for I do not know who they all were. I think I stated in my other testimony that I could not answer that question.

Q. Well, do you know who the parties were, besides yourself and Mr. Hill, who purchased parts of that $26,000,000?

A. The only one I know of is Mr. D. Willis James. He told me he had purchased some. The others I cannot speak for at all.

Q. Do you know by whom the purchase of that block of Northern Pacific stock was suggested?

A. I don't know who suggested it. No; I don't know that.

Mr. Kellogg. Do you mean, suggested to him?

Q. Yes; by whom it was suggested to you.

A. No, sir; I don't remember that.

Q. Do you know by whom the negotiations for that purchase were inaugurated and who conducted the negotiations?

A. I don't know, but I think it was Mr. Hill, but I won't be certain.

Q. Aren't you quite positive, Mr. Kennedy, that Mr. Hill engineered that purchase and suggested it, and that it was carried out by you gentlemen who had acted in harmony, as you stated in your cross-examination, from the beginning?

A. I cannot say.

Q. Now, coming down to the stock flurry in 1901, who conducted the negotiations with Mr. Morgan for the purchase of the $10,000,000 of stock that was taken up from him?

Mr. Kellogg. He explained that before. He said he bought a million of it at Mr. Hill's suggestion.

A. I told you the whole story.

Q. So that the same parties that you have already referred

to were the parties who purchased that additional block of $10,000,000? 1567

A. That I don't know. I only know what I purchased myself.

Q. When the matter of organizing the present Northern Securities Company—I am not speaking now of the old company that was in the air, but the matter of organizing the securities company that was actually organized—was first brought to your attention, did you gentlemen who considered that subject not know pretty definitely in regard to then present holdings of Northern Pacific stock? 1568

A. Of course we knew about how the stock was held.

Q. And was it not then generally understood between you that the parties who were acting with you and had acted with you during this flurry, and who had stood together, were agreed on the general plan or policy of putting their holdings into the securities company?

A. I don't recall any general agreement about it.

Q. I am not asking for an agreement, but wasn't it understood that that was the policy, inclination, or purpose, or wish of all these parties?

A. Personally I suppposed the majority of that stock would go into the securities company of the Northern Pacific common stock. 1569

Q. You talked that subject over with Mr. Hill quite thoroughly, did you not?

A. I don't know what you would call thoroughly. We talked two or three times about it.

Q. And he informed you that he had conferred with the other parties in reference to it?

A. I have no recollection of his making any such statement as that.

Q. From whom did you obtain your personal impression that all these parties would go into the Northern Securities Company? 1570

A. It was partly from Mr. Hill and partly from conversations with Mr. Perkins or Mr. Steele, of J. P. Morgan & Co. No, I think it was Mr. Perkins.

Q. Of Morgan & Co.?

A. Yes.

1571 Q. So that at the time you planned the organization of this present securities company it was pretty generally understood that all of you gentlemen would put your holdings in there?

A. I supposed they would. I had no positive information on the subject. They were free to do as they pleased.

Q. And it was your plan and purpose, and the plan and purpose of those who organized this securities company, to have the stock go in there?

A. If the people chose to sell it. We couldn't compel it.

Q. I understand that; but wasn't that your wish and pur-
1572 pose?

A. We thought it probable that they would. I have testified to that.

Q. And you acted upon that supposition in going ahead and organizing?

A. I don't know whether other people did or not.

Q. But you did?

A. That was my idea.

Q. Now, was the plan of retirement of the Northern Pacific preferred explained to you before it was put through?

A. Yes, sir.

1573 Q. Under the plan of retirement adopted by the Northern Pacific Railway Company, you gentlemen who had laid out this plan of Northern Securities Company received a majority of the common stock, did you not?

A. When was that? I don't just get that.

Q. I say, when the plan was put through, you received a majority of the common stock.

A. Which plan?

Q. The plan that was actually put through.

A. The plan of redemption of the preferred stock?

Q. Yes, sir.

1574 A. What did you say after that?

Q. I say you gentlemen received a majority of the stock of the Northern Pacific—of the common stock?

Mr. Kellogg. Whom do you refer to?

Mr. Boutelle. I am speaking of these same gentlemen who have been acting together all through. I don't think the witness misunderstands me.

A. I do misunderstand you. I don't think it is clear.

Q. You have already explained to us there was a number of 1575
gentlemen that had conferred together in regard to the organization of this Northern Securities Company, and that that discussion——

A. I did not tell you that, sir.

Q. Didn't you state you had talked with Mr. Hill and understood from him that all you gentlemen were favorable to that?

A. All which gentlemen?

Q. All the gentlemen I have referred to.

A. I told you some of them I didn't know and couldn't 1576
answer.

Q. As far as you talked, that was the understanding?

A. That some of those gentlemen were willing to come in.

Q. And that was all?

A. You mentioned gentlemen's names here that I don't know. I never conferred with them.

Q. Didn't Mr. Hill state to you and give you to understand so that you felt practically sure that a majority of that stock was going in before the securities company was organized?

A. The impression I got was that a majority would go in, but when you ask for knowledge, I don't know. 1577

Q. Now, Mr. Kennedy, did you understand that the board of directors of the Northern Securities Company, when that company was organized, would handle its property, or operate its property, or use its property in any other or different way from any other similar organization? Explain how similar organizations would do.

A. I cannot answer that.

Q. Do you understand that the Northern Securities Company, or its board of directors, would operate or control its property in any other way than any ordinary corporation would? 1578

A. They would certainly control their property under the terms of the charter.

Q. Did you understand that they would control their property in the way that corporations ordinarily control the property that they own?

A. I am not familiar with the way corporations control their property.

1579 Q. You have been a member of corporations for a great many years?

A. Yes, sir.

Q. You have been a member of boards of directors of railways for many years?

A. Yes, sir.

Q. And been a stockholder in various corporations?

A. Yes.

Q. What I want to know is whether you understood that the Northern Securities Company was going to control its affairs and property any different from any other corporation?

1580 A. I supposed it would control its affairs like any corporation organized for such purposes would do.

Q. Now, what was the purpose?

A. You have got it in the articles of incorporation.

Q. Can you state any peculiarity in its purposes that would take it out of the run so far as control was concerned or proprietorship, or so far as management was concerned?

A. Take it out of what?

Q. The ordinary run of corporations?

A. It would conduct business as corporations organized for

1581 similar purposes would do.

Q. Can you suggest any difference between this corporation and any ordinary corporation, so far as operating and controlling its properties are concerned?

Mr. Kellogg. You are asking Mr. Kennedy's opinions about legal questions.

Mr. Boutelle. I don't think so. I think this is legitimate in view of your cross-examination.

JOHN S. KENNEDY, being duly sworn as a witness on behalf of the complainant, testified as follows:

1582

DIRECT EXAMINATION.

By Mr. Munn.

Q. Mr. Kennedy, you have already testified in the case preceding this, regarding certain transactions leading up to the formation of the Northern Securities Company?

A. Yes.

Q. And you have come here to-day, at our request, volun- 1583
tarily, to testify to some additional facts?

A. Yes.

Q. During the year 1901, or during the summer of 1901, after your return from Europe, did you have some consultations with W. P. Clough and Mr. Hill, looking toward the formation of a holding company, which was ultimately organized under the name of the Northern Securities Company?

A. I don't remember seeing Col. Clough. I returned from Europe on Saturday, the 8th of June, and I left again, for Canada, on the following Monday. The only person I remember to have seen was Mr. Hill. He was in New York, and he 1584
called at my house that evening. We had some conversation, but I can't recall anything being said on that subject at that interview. I think possibly he talked about it, but I can't recall anything.

Q. Did you subsequently return to the City of New York and have some conversation with Mr. Hill and Mr. Clough, regarding the same matter?

A. I was not in New York again until the early part of August. I was here for three or four days during the early part of August. 1585

Q. During that time did you have some talk with Mr. Clough and Mr. Hill, regarding this matter?

A. I had with Mr. Hill; I don't recall having any with Mr. Clough. Very likely I did, but I can't recall any special conversation with Mr. Clough.

Q. At that time had it been determined by Mr. Hill and his associates or friends, who were holders of Great Northern stock, that this company should be organized?

A. I don't think it was definitely determined at that time. The matter was talked about, but I do not think there was anything definite determined about it. 1586

Q. Mr. Hill has testified that it was decided, prior to July 1, to organize a company to acquire the Northern Pacific, and more or less of the Great Northern, stock, but that the name had not been fixed, as I remember the testimony.

Mr. Young. That is objected to as not a correct statement of Mr. Hill's testimony.

1587 Mr. Munn. I may be in error, but I think that is the exact testimony, Mr. Young.

Mr. Young. He certainly did not go any further than testifying to a company to hold the stock owned by these gentlemen in the two companies. Not to acquire the Northern Pacific stock.

Mr. Munn. I will change the form of the question.

Q. Mr. Hill has testified that it was determined or decided, prior to July 1, to organize a holding company into which should be transferred or exchanged the stock of some of the Great Northern stockholders. Now, did he discuss that with
1588 you during August, if you remember, Mr. Kennedy?

A. Yes.

Q. When did you first learn or decide that the Northern Pacific stock should be turned in to this holding company?

A. I think that was in August, but it may have been when I returned to the city in October; I wouldn't be certain, but I think it was in August.

Q. At the time that was decided, was it determined to take in substantially all of the Northern Pacific stock?

A. Not to take in all; to take in a majority of it.

1589 Q. At that time Mr. Morgan, Mr. Hill, and yourself, with some other gentlemen, some of whom were stockholders in the Great Northern Railway Company, and some of whom were not, had a majority of the Northern Pacific common stock, had they not?

A. We thought we had.

Q. About $42,000,000 worth?

A. I think it was forty-one millions or maybe forty-two millions. I think it was a fraction under forty-two millions.

Q. And it was decided to turn that entire amount in?

A. Yes, if the parties were willing to put it in.

1590 Q. For some years prior to this time, yourself and Mr. Hill, and some other friends of both yourself and Mr. Hill, had had holdings amounting to about thirty-five millions, in the Great Northern Railway Company, had you not?

A. That depends upon the time you refer to.

Q. Well, for six months preceding July 1, 1901.

A. My recollection is that Mr. Hill and friends of his (some of whom I don't know) held right along for some years from 25

to 30 per cent of the stock of the Great Northern Railway 1591
Company, and the amount which you refer to; I think it was thirty-five millions.

Q. Yes.

A. Yes. That would be less than a third in volume of the stock then outstanding.

Q. And the holders of this amount of stock had always co-operated, so far as the determination of the policy of the Great Northern Railway Company was concerned, and the development of its railway system, had they not?

A. Well, I can't say that. We were stockholders, and so 1592
far as I was concerned I had confidence in Mr. Hill and his management. I always gave him my proxy as a stockholder, naturally would; and I believe not only these paticular persons you refer to, but I think that at least nine-tenths of the stockholders, always did send their proxies to Mr. Hill for an annual election. But when you talk about controlling the policy, I had nothing to do with the policy of the company.

Q. No; that, of course, is determined through the stockholders.

A. Stockholders vote for the directors, but they don't vote for the policy.

1593

Q. No, but the directors fix the policy?

A. The directors fix the policy.

Q. And the directors, being elected by the stockholders, naturally, of course, carry out the policy of the stockholders?

A. I suppose they would exercise their own judgment; but the stockholders, if they are not satisfied, at the next election would turn them out.

Q. Now, Mr. Kennedy, in August, September, or possibly October, was it decided that you gentlemen should turn your holdings in the Great Northern Railway Company into this holding company?

1594

A. I remember something was said about that, and I think those of us who were then present expressed our intention to turn in our Great Northern stock, that is to say, if a holding company was formed.

Q. Now, the holding company was afterwards organized?

A. The holding company was afterwards organized, yes.

Q. And that is known as the Northern Securities Company?

1595 A. Northern Securities Company, yes.

Q. At the time the holding company was organized and you gentlemen decided to turn in your stock, which you did, as I understand it, did you not expect that the same control over the policy of the Great Northern Railway Company would continue through the Northern Securities Company, by your stock being in there, that existed before?

A. Well, I don't remember hearing any discussion on a matter of that kind, and I don't remember thinking anything about it. I think the idea was—this was in my mind—that
1596 we would get a majority of the common stock of the Northern Pacific, and that we would get at least a third of the stock of the Great Northern Railway Company.

Q. Yes. Get enough so that the policy of the Great Northern Railway Company could be determined through the stock holdings of the Northern Securities Company, the same as it had been in the past?

A. I don't remember that I had any thought about it; but, as I said before, we had about that amount of stock, and I supposed that that block of stock, voted by the stockholders, unless the others combined, would carry an election.

1597 Q. And you had no expectation of any combinations against it, of course?

A. I never heard of any combination against the Great Northern Railway Company at any time.

Q. So that it was your expectation, at least, that the transfer of your holdings and of these gentlemen whom I have named as friends or associates of yourself and Mr. Hill, would transfer to the holding company the same powers which had been exercised prior to the transfer of that stock?

A. Simply we would transfer our stock to the Northern Securities Company, and they would possess all the powers that
1598 we had formerly exercised and possessed as individual stockholders.

Q. And you expected also, did you not, Mr. Kennedy, that that would be sufficient, unless something unforeseen arose, to control the policy of the Great Northern Railway Company?

A. I don't remember having any expectation about it, but, of course, it would naturally result (unless a combination was

made of a majority of the stock against us) that we would carry an election. 1599

Q. There never had been, I think you have already testified, Mr. Kennedy, any combination or move against the policy of the company as it was represented by these gentlemen, including yourself, through Mr. Hill voting this stock?

A. Well, I can only say that individually as a stockholder I gave him the proxy to vote my stock. I never had anything to do with determining the policy of the company. I did simply as other stockholders did. There were fifteen hundred stockholders. I had only the same powers as any other stockholder had—to vote at an election, but I had nothing to do with advising or determining the policy of the company. 1600

Q. Of course not; you left that to the board of directors elected by your stock and other stock.

A. Certainly; elected by our stock.

Q. But I say there never had been any combination of other stockholders of the Great Northern Railway Company against the policy as it was laid out by the board of directors?

A. None that I ever heard of. I don't think there ever was.

Q. And you did not expect there would be after the formation of the Northern Securities Company and you had turned your stock in? 1601

A. I don't remember of having any expectation about it.

CROSS-EXAMINATION.

By Mr. Young:

Q. Mr. Kennedy, the Great Northern Railway Company had been very successfully managed, had it not?

A. Yes; always has been, according to my judgment.

Q. According to your judgment?

A. Yes. 1602

Q. And it was because of your confidence in the management that you gave your proxy to Mr. Hill?

A. Certainly; because of my confidence in his management.

Q. So far as you know, is that the reason why the other stockholders gave theirs?

A. I suppose so. I always supposed so.

1603 **Q. Now, in speaking of a majority of the stock of the Northern Pacific going into any new company, did you refer to a majority of all the stock or of the common stock?**

A. I mean the common stock. I thought that was understood.

Mr. Munn. That is what I intended to imply by that.

(Signed) JOHN S. KENNEDY.

Subscribed and sworn to before me this 25th day of Novem-
1604 **ber, 1902, at the City of New York.**

FREDERICK G. INGERSOLL,
Special Examiner.

City of New York, January 13, 1903.

Pursuant to the stipulation of the parties, this cause was called for hearing by the Examiner at the General Offices of the Northern Pacific Railway Company, No. 49 Wall street, in the City of New York, this 13th day of January, 1903, at 11 o'clock a. m. All parties appeared. Thereupon, by con-
1605 sent, a recess was taken until 2:30 p. m., this day, at which time the following testimony was introduced:

GEORGE F. BAKER, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION.

By Mr. Munn:

Q. Mr. Baker, during 1901, were you a stockholder in the Great Northern Railway Company?

1606 A. Yes, sir.

Q. And about how much stock did you own?

A. Do you want that exactly?

Q. No, just approximately.

A. Over ten thousand shares.

Q. And how long had you been such stockholder?

A. Over five years.

Q. Were you also a stockholder in the Northern Pacific?

A. Yes, sir. 1607

Q. And how much stock (common stock) did you own in that company?

A. Several thousand shares.

Q. How long had you been the owner of that stock?

A. For several years.

Q. Some of the witnesses, including Mr. Hill, and possibly Mr. Kennedy and Mr. James, have spoken of a number of Great Northern stockholders who have been described as a coterie of stockholders, owning all told about 35 millions of Great Northern stock, and your name has been mentioned as one of that list of stockholders. 1608

A. Yes, sir.

Q. And also that those holders of Great Northern stock were desirous of continuing a sort of unity of ownership of that stock, or, rather, unity of control of that stock. Did you know anything about such a desire on the part of these gentlemen, including yourself?

A. That had been talked of several years, yes, sir.

Q. That is, you gentlemen had co-operated more or less, so far as the affairs of the Great Northern were concerned, in voting your stock?

1609

A. I can't say, as far as I am concerned, that we co-operated. I don't think I was in the councils enough for that, they were so much larger stockholders.

Q. Well, you were always considered one of this coterie who would co-operate with Mr. Hill in voting this stock?

A. Yes, sir.

Q. And you always did?

A. Yes, sir.

Q. When did you first hear of the formation, or the purpose of forming the Northern Securities Company?

A. It was just about the time it was formed; just previous 1610 to its formation.

Q. How long prior to its formation?

A. I cannot remember, but probably not over thirty days; maybe more and maybe less, probably less.

Q. Who called that to your attention?

A. I think Mr. Hill did.

1611 Q. What was the occasion of his calling that to your attention?

A. That I can't remember.

Q. Was it here in New York?

A. Yes.

Q. Can you give us the conversation you had with Mr. Hill in regard to the formation of that company?

A. No, because it came up at different times in informal conversations, without going into the matter thoroughly.

Q. You mean subsequent to this first reference that you
1612 have mentioned as taking place a month prior to the formation of the company?

A. Yes, sir.

Q. You mean between that time and the time it was actually formed you had several talks with Mr. Hill about it?

A. Yes, sir.

Q. Now, did he talk with you about the purpose of forming that company?

A. I wouldn't like to say no, but I can't remember that he did.

Q. Can you give us anything that was said in these talks
1613 regarding the formation of that company, as to who was going to put their stock in and how much they were going to put in?

A. No, I can't, exactly.

Q. Did you have any talks with Mr. Hill or anybody else as to who would transfer their Great Northern stock to this holding company?

A. I think not.

Q. Well, what was the nature of these conversations you had with Mr. Hill?

A. They were quite general in their way. We had been
1614 through an experience in the spring there——

Q. The May 9th affair you refer to?

A. Yes; when one of the Southern railway companies, the Union Pacific especially, was trying to get hold of our property, as we thought, and would turn the business from the Northwest to California.

Q. When you say "our property" what do you mean?

A. I mean the Great Northern or Northern Pacific, either 1615
one of them.

Q. There had been no effort to get control of the Great Northern, had there, that you ever heard of?

A. No, I think not.

Q. You have reference entirely to the attempt to get a controlling interest in the Northern Pacific stock?

A. Northern Pacific, yes.

Q. There never had been any effort made to get control of the Great Northern?

A. Not to my knowledge, no.

Q. What were you and Mr. Hill discussing regarding that? 1616
Just state what was said by Mr. Hill and yourself, as near as you can.

A. Well, I can't remember that.

Q. Well, perhaps I should not have interrupted you. You were saying that this experience of May 9th had taken place, and leading up to these conversations from that. Now, just proceed with that narration.

A. Well, we felt we didn't want to have the Northern Pacific go into the hands of parties adverse to our interests.

Q. That is, you wanted the Northern Pacific and the Great 1617
Northern stocks placed with some company where the control would remain permanently? That is what you had in mind?

A. We hoped so, sir.

Q. And that was one of the purposes that you and Mr. Hill talked over in forming this Northern Securities Company?

A. I presume so.

Q. That is, you and Mr. Hill and his other associates making up this coterie of Great Northern stockholders and also the holders of a majority of the common stock of the Northern Pacific, desired to have that stock placed where it could 1618
not be raided?

A. Yes, sir.

Q. And thus fix the control of those two companies in one spot, where you gentlemen would know where it was?

A. Yes, sir.

Q. Did Mr. Hill say that, in his judgment, that purpose

1619 could be accomplished by the formation of this Northern Securities Company?

A. I can't remember that he ever said so.

Q. Well, that is what you expected, of course?

A. Yes, sir.

Q. Both you and Mr. Hill and your other associates?

A. I am speaking for myself.

Q. That was your understanding of it?

A. Yes, sir.

Q. You consented to the formation of such a company?

1620 A. Well, I made no objection.

Q. Did Mr. Hill tell you about how much stock would be turned in, as far as the Great Northern Company was concerned?

A. No, sir.

Q. You and Mr. Hill and the other gentlemen making up this coterie of Great Northern stockholders were all desirous during this time of keeping this stockholding in the Great Northern permanently in one place?

A. Yes, sir.

Q. What was your desire in doing that? Why did you

1621 wish it?

A. Principally that some of us—or some of them—were getting old, and we thought it was desirable to keep the thing together; we had talked of that for several years.

Q. That is, you wanted to fix the control of the Great Northern through a stockholding in the Northern Securities Company?

A. Yes, sir.

Q. And this coterie of stockholders had always been able to control the Great Northern Railway Company?

A. We had.

1622 Q. And you expected when you transferred those holdings of the Great Northern Railway Company to the Northern Securities Company that the corporation would be able perpetually to control the Great Northern Railway Company by that stockholding? That was your expectation?

A. Well, that would depend on whether it was all put in or not.

Q. Yes, but that was your expectation?

A. That was what we hoped for, yes, sir. 1623

Q. And that is what you hoped for when you were discussing the advisability of forming this Northern Securities Company?

A. Well, we discussed that very little, as far as I was concerned.

Q. Well, that is what you had in mind?

A. Yes, sir.

Q. That was the purpose of the formation of this company—the Northern Securities Company?

A. Well, I can't say what was the purpose of the men that got it up; they were more instrumental in it than I was. 1624

Q. As far as you were concerned that was your purpose and you understood that to be their purpose?

A. Yes, sir.

Q. And also to control the Northern Pacific, of course, through this majority of the common stock?

A. Yes, sir.

Q. The Northern Securities Company was formed, in fact, on the 13th or 14th of November, 1901?

A. About that time.

Q. How soon after that did you transfer your Northern Pacific and Great Northern holdings to the Northern Securities Company? 1625

A. I don't remember the date.

Q. Very shortly after?

A. If you want to get the exact date I will send for it.

Q. Approximately, Mr. Baker; I presume is was very soon afterwards?

A. Yes, sir.

Q. Did you have any talk with Mr. Hill as to the basis of exchange for these stocks, that is, I mean as to what valuation should be placed upon your Great Northern and Northern Pacific stock as the basis of exchange for the Northern Securities Company? 1626

A. I think not, only he told me what the basis would be.

Q. He told you during these first talks you had with him?

A. I don't think it was during the first talk. I think it was about the time the thing was consummated.

Q. But you had no part in making up that basis?

1627 A. No, sir.

Q. I suppose he told you it would be $180 for the Great Northern and $115 for the Northern Pacific?

A. Yes, sir.

Q. Well, about what time did you learn, Mr. Baker, that that was the basis of exchange?

A. It was just about the time of the consummation of it.

Q. That is, sometime prior to the formation of the Northern Securities Company?

A. Well, I don't know whether it was before or after the formation of the company.

1628 Q. You had no part, you say, in making up that basis?

A. No active part.

Q. And were not consulted about it?

A. Well, no more than that; he said they proposed to put it in on that basis, and I said I thought that was fair.

Q. Did you have any talk with Mr. Hill during the month preceding the formation of the Northern Securities Company as to where that corporation should be formed or the terms of its articles?

A. I think not.

1629 Q. You didn't know what powers would be contained in the articles at all?

A. I did not.

Q. Did you know what powers were contained in them prior to the time you transferred your stock?

A. Only in a general way.

Q. Did you have any talk with Mr. Hill, or with anybody else who was instrumental in forming that corporation (meaning the Northern Securities Company) as to the right to form such a company and hold this stock?

A. Not that I remember.

1630 Q. With whom else did you talk besides Mr. Hill about the formation of this company, if anyone?

A. I can't remember of any particular person. Very likely when we would meet together, several of us meet together, we would talk it over.

Q. When you say "several of us" you mean stockholders of the Northern Pacific or Great Northern?

A. Yes, sir. Naturally people interested in the property.

Q. One or the other. Did you have any talk with Mr. John 1631
S. Kennedy?

A. I think Mr. Kennedy, and possibly Mr. James.

Q. Did you ever have any talk with Mr. Thorne about it?

A. I don't remember that I did with Mr. Thorne.

Q. Well, do you remember any conversations either with Mr. Kennedy or Mr. James on the subject?

A. Not specially. There was no important conversation held.

Q. Well, what, if anything, do you remember that they said about the formation of this company and the purpose of it? 1632

A. Nothing excepting in a general way, that it would be a good thing to do.

Q. That is, did they talk along the same lines as to the purpose of this company and the transfer of the stock to it, both Great Northern and Northern Pacific, that you have suggested here that you had in your own mind?

A. I don't think they ever talked much.

Q. I think Mr. James said he had one or two conversations with you, and I think Mr. Kennedy also said he had.

A. Well, we were there together, but I don't think we were much talkers; we were listeners. 1633

Q. You left it almost entirely to Mr. Hill?

A. Yes, sir.

Q. You looked to him to carry out what you understood to be the desire of yourself and your associate holders of stock in both the Northern Pacific and Great Northern in the formation of this company?

A. Yes, pretty much; he and the parties in interest, officers and counsel.

Q. Officers of what company,—Great Northern?

A. Great Northern.

Q. And also the Northern Pacific? 1634

A. I don't know whether the Northern Pacific officers had anything to do with it or not.

Q. That is, you left it to him (Mr. Hill) to carry out what you have described here as the purpose in forming this Northern Securities Company, to the extent at least of having the company properly formed or organized and seeing that the stockholders, both Great Northern and Northern Pacific,

1635 should transfer their stock to the Northern Securities Company?

A. Well, he practically did that——

Counsel for defendants interrupted and asked that the question be read.

The question was read.

Witness. I can't say that I left it to him; I simply assented to it.

Q. Well, you took no part in it yourself?

A. No, sir.

1636 Q. You expected somebody would do it?

A. Yes, sir.

Q. And you expected Mr. Hill would be that man, didn't you?

A. Naturally.

Q. During these talks that you had with Mr. Hill looking to the formation of the Northern Securities Company, did you and he talk more or less about the purposes of its formation and what you desired to accomplish by it, as you have described here?

A. I don't remember that we did.

1637 Q. Well, you must have had some talk about it.

A. It may have been mentioned, but it never was discussed fully.

Q. Well, didn't you talk it over with Mr. Hill to a greater or less degree?

A. Yes, especially to a less degree.

Q. Well, you certainly understood what you have testified to be your purpose, did you not, in these talks with Mr. Hill?

A. I assented to them, yes.

Q. And you understood those to be the purposes of Mr. Hill, did you not?

1638 A. Practically, yes.

Q. And you got that from your conversations with him, of course?

A. Practically, yes, sir.

Q. Did you have any talk with Col. W. P. Clough regarding the formation of the Northern Securities Company prior to its organization?

A. I don't remember. Practically I had no active part in 1639
it; had very little to do with it.

Q. You recall no such conversations with Mr. Clough?

A. No, I do not.

Q. Did you in your talks with Mr. Hill make any reference to the litigation which had taken place in what is known as the Pearsall case in 1895-6?

A. No, sir; not to my remembrance.

Q. Were you a stockholder in the Great Northern Railway Company in 1895-6?

A. I think so. 1640

Q. You remember that litigation, I presume?

A. No, I do not. I know there was such a thing as the Pearsall litigation, but I don't remember much about it.

Q. That is the case wherein the question arose as to whether or not certain stockholders in the Great Northern Railway Company had a right to hold as trustees substantially a controlling interest in the stock of the Northern Pacific Railway Company,—the stockholders holding the stock in trust really for the Great Northern Railway Company.

A. I don't remember much about that case.

Q. Do you remember the time that effort was made in 1895 1641
or 1896?

A. To what?

Q. Do you remember the time the effort was made to hold the stock or a controlling interest in the stock of the Northern Pacific in the manner that I have described, by the stockholders of the Great Northern Railway Company?

A. Yes, sir.

Q. Did you have talks with Mr. Hill at that time about the desirability of the stockholders of the Great Northern Railway Company acquiring a control over the stock of the Northern Pacific in that manner? 1642

A. Quite possibly, although I don't remember it.

Q. And you don't remember now whether any reference was made during these conversations you had with Mr. Hill in the month preceding the formation of the Northern Securities Company to that experience of 1895 and 1896?

A. I think not. I think there was no such conversation, or I would remember it.

1643 Q. Did you acquire any additional Northern Pacific common stock during the summer of 1901 from any person?

A. Yes, sir.

Q. About how much?

A. Approximately over ten thousand shares.

Q. Something like over ten thousand shares?

A. Yes, sir.

Q. And about how much had you held prior to that time?

A. Over ten thousand shares.

Q. So that you had during the summer of 1901, after May
1644 9th and prior to the organization of the Northern Securities Company, somewhere in the neighborhood of twenty thousand shares of the common stock of the Northern Pacific Company?

A. Yes, sir.

CROSS-EXAMINATION.

By Mr. Grover:

Q. You had heard mentioned the desirability of organizing a company to hold shares of Great Northern stock held by
1645 yourself and Mr. Hill and some seven or eight other gentlemen, aggregating about 30 millions, had you not?

A. Yes, sir. I don't know what it aggregated.

Q. About that. When did you first hear any conversation on this subject?

A. Well, it was several years ago.

Q. When you state in answer to Mr. Munn's question that the first you heard of organizing the Northern Securities Company, you mean a company of that name, bearing that name, do you not?

A. The company that has been organized.

1646 Q. The company that was organized?

A. Yes, sir.

Q. You say you heard of the purpose to plan the Northern Securities Company as it was organized about a month before it was finally organized?

A. Yes, sir.

Q. Now, will you state definitely what your purpose was in

transferring the Great Northern and Northern Pacific shares, 1647
selling them, to the Northern Securities Company?

A. Because I thought it would make them more valuable.

Q. In what way? You have spoken about the Union Pacific, that deal. I wish you would explain how all that worked in to influence your judgment in doing what you did.

A. Well, I think in a general way I felt that if some parties of foreign interests to the Northwest were to divert that business down to California that both the Northern Pacific and the Great Northern properties would be worth less money.

Q. Now, the Northern Pacific and Great Northern had en- 1648
tered into a joint obligation of over 200 millions on account of the Burlington purchase, had they not?

A. Yes, sir.

Q. That was a joint and several obligation?

A. Yes, sir.

Q. You were a large stockholder in the Great Northern?

A. Yes, sir.

Q. What, in your judgment, would have been the effect upon your Great Northern interests, as a stockholder of the Great Northern, had the Northern Pacific gone into the hands 1649
of the Union Pacific?

A. I think it would have been a great set-back to the Northwest and would have consequently depreciated the value of the Great Northern property.

Q. Then, your purpose was to protect your interests as a stockholder in both the Great Northern and Northern Pacific companies?

A. Absolutely.

Q. That you transferred your interests in each company to the Northern Securities Company?

A. Yes, sir. 1650

Q. Was there ever any agreement or understanding between you and any shareholder of the Great Northern and Northern Pacific that your shares should be transferred to the Northern Securities Company?

A. No, sir.

Q. Was there ever any talk that anybody would induce or

1651 try to induce or prevail upon any shareholder to so transfer his stock?

A. Not that I know of.

Q. Was it not, then, a matter for each individual?

A. Entirely.

Q. And did you make any absolute sale of your shares to the Northern Securities Company?

A. I did.

Q. Had you ever heard of any difference of opinion, any contest among the shareholders of the Great Northern, concerning the policy of its management?

1652 A. No, sir.

Q. State as to whether you had given proxies to Mr. Hill to vote your shares usually at stockholders' meetings.

A. I had, yes, sir.

Q. Did you ever personally attend a stockholders' meeting of the Great Northern prior to 1901?

A. Never.

Q. Now, Mr. Baker, wasn't it discussed early, as respects the Great Northern shares, the advantage that it would be to the shareholders forming what Mr. Munn calls the coterie, to

1653 have their shares held by some one interest, and held together and voted together in view of the age of many of the shareholders and the effect that that would have on the general policy of the company?

A. I have so testified.

Q. You took no part in the organization of the Northern Securities Company?

A. No, sir.

Q. Didn't read its articles, did you, before they were adopted?

A. No, sir.

1654 Q. But did concur in general talk in the proposition that it was a wise and sensible thing to do?

A. Yes, sir.

Q. Now, was there ever, to your knowledge, any power that controlled the management or policy of the Great Northern Railway Company except through stock voting and the election of directors of the company——

A. No, sir.

Q. —and a majority of the stock? 1655

A. No, sir.

RE-DIRECT EXAMINATION.

By Mr. Munn:

Q. The Great Northern Railway Company had always been substantially under the control of Mr. Hill, so far as the determination of its policy was concerned, during all the time you were a stockholder of that company, had it not?

A. I think so.

Q. In other words, it was known among you gentlemen as 1656
Mr. Hill's road?

A. Yes, sir.

Q. And you gentlemen, including yourself and the other parties making up this coterie, as well as many others, had always left it entirely to Mr. Hill so far as the voting of your stock was concerned, sending your proxies?

A. Yes, sir.

Q. Never attended meetings yourself?

A. I never have.

Q. Now, you say that the determination or desire to have 1657
this holding of about thirty-five millions of Great Northern stock unified in some place where it would be permanent, had existed among you gentlemen prior to the year 1901?

A. The desire to have it done?

Q. Yes.

A. Yes, sir.

Q. Therefore, the desire to have that done was not created by the raid of May 9, 1901, was it?

A. No, sir.

Q. Or any fears that might exist in the minds of you gentlemen as a result of that raid and the acquisition of the Bur- 1658
lington property by the Great Northern and Northern Pacific?

A. That brought about its consummation to some extent.

Q. Yes, but you had had that desire and determination just the same prior to that time?

A. We had had that desire.

Q. You speak about a sale of your stock to the Northern

1659 Securities Company. All you did was to exchange your Great Northern and Northern Pacific stock for Northern Securities Company stock on the basis already referred to?

A. Practically.

Q. And that is equally true of all the other gentlemen making up the coterie of Great Northern as well as Northern Pacific stockholders?

A. I suppose so.

Q. You and your associate stockholders in both the Great Northern and Northern Pacific understood that the stock held
1660 by you in those two companies would be exchanged for the stock of the Northern Securities Company on the basis I have mentioned, to-wit: 180 for the Great Northern and 115 for the Northern Pacific, prior to the time the Northern Securities Company was actually formed?

A. No, sir,—if I understand your question right.

Q. Well, I will try to make it clear again. You knew there was to be a Northern Securities Company formed prior to the time it was formed?

A. Yes, sir.

Q. For the purpose of taking the stock of you gentlemen in
1661 both the Great Northern and the Northern Pacific?

A. Yes, sir.

Q. And you also knew the basis of exchange?

A. I can't say that, no, sir.

Q. Well, leaving out the basis of exchange, then, you knew prior to the time that the Northern Securities Company was formed that such a company was to be formed for the purpose of taking over the stock of both the Great Northern and the Northern Pacific in order to effect this control that you have spoken about?

A. Yes, sir.

1662 Q. Now, Mr. Baker, you say that one reason you had for exchanging your stock was that you thought it would make your stock more valuable. What additional value could be given to your stock by exchanging it for the Northern Securities Company stock?

A. Perhaps I should have expressed that better by saying I hoped it would keep it from being depreciated in value.

Q. That is, you thought by the organization of the North-

ern Securities Company and the taking over of the stock of 1663
both the Great Northern and Northern Pacific by that company, that the permanent control of those two corporations would be fixed in one place?

A. If it would prevent it going into the hands of the other companies that were seeking to control it, it would be more valuable than if we should lose control of the property.

Q. That is, then, you had in mind that by fixing the ownership of Great Northern and Northern Pacific stock in one holding company, you would thus permanently fix the control of those two companies so that they could not be assailed by any outside influence? 1664

A. Yes, sir.

Q. And that is what you had in mind?

A. Partly.

Q. Now, was that discussed by you and Mr. Hill in these talks among other things that you talked over?

A. I think not.

Q. That was what you understood to be the purpose?

A. In a general way, yes.

Q. And you thought that was a desirable thing to do?

A. Yes, sir. 1665

Q. And that is what you mean when you say you thought by so doing and forming this company that you would enhance or, at least, prevent a depreciation of the value of the Great Northern and Northern Pacific stocks?

A. Yes, sir.

Q. You understood, of course, that these other gentlemen would turn their stocks in on the same basis?

A. I had no knowledge of it, I assumed they would.

Q. You assumed they would. Of course you would not accomplish what you sought without that?

A. I don't think they did turn it all in. 1666

Q. You assumed they would?

A. To a greater or less degree, yes.

Q. You could not accomplish what you sought without that, of course?

A. Oh, I don't know.

Q. Well, you could not get the ownership of this stock of

1667 these two companies in the Northern Securities Company unless they did turn in their stock just as you did and on the same basis?

A. I don't know as it was necessary to get the ownership of the two companies in there.

Q. We have gone all over that, Mr. Baker. Now you say you desired to accomplish that?

A. Yes, sir.

Q. Now, you could not accomplish that unless the others turned in their stock the same as you did?

1668 A. Oh, I don't think it is absolutely necessary to have the ownership of the two companies—the majority of the stock of the two companies.

Q. Do you think you could control it without that?

A. Why, I think so, yes. That is my personal opinion. The great thing was to control the Northern Pacific.

Q. That is, there was no trouble about controlling the Great Northern?

A. There was no diversity of opinion about that.

Q. That you felt was secure and safe; is that right?

A. Was what?

1669 Q. That you felt secure and safe—the control of the Great Northern?

A. Yes, sir.

Q. And you desired to get the control of the Northern Pacific fixed?

A. Yes, sir.

Q. Well, you were also seeking to carry out what you had in mind sometime prior to that, and that was to get the holdings of this coterie of stockholders in the Great Northern permanently unified in one place?

A. Yes, sir.

1670 Q. And you could not accomplish that unless those gentlemen turned their Great Northern stock in to the Northern Securities Company?

A. No, sir.

Q. Therefore, you expected that they would turn their stock in, did you?

A. Yes, but they didn't.

Q. Well, the testimony shows—

A. Well, I don't think they did. 1671

Q. Well, the testimony shows they have, Mr. Baker.

A. Well, then, I only give it as my opinion.

Mr. Clough. What is that the testimony shows, Mr. Munn?

Mr. Munn. That Mr. Kennedy and Mr. James and Mr. Hill have turned in their stock, and Mr. Baker says he has turned his in.

RE-CROSS-EXAMINATION.

By Mr. Grover:

Q. Now, Mr. Baker, when you say that the Northern Securities Company was organized "for the purpose," do you mean anything more than it was discussed that it should be organized with the power to acquire these shares if the holders wanted to sell them? 1672

A. That or any other shares we wanted to sell, or any other properties.

Q. All that was discussed, then, was to organize a company that should have the power to acquire shares of stock and securities, including the Great Northern and the Northern Pacific?

A. That is right. 1673

Q. From those who wished to sell?

A. Yes, sir.

Q. Now, what do you mean by the words "hold permanently"? Mr. Munn is constantly repeating that phrase—"to permanently hold." Isn't the Northern Securities Company at liberty to sell the shares it purchases?

Mr Douglas. Objected to as incompetent, irrelevant and immaterial.

A. At any day.

Q. Was there any understanding or agreement that the Northern Securities Company should hold permanently or keep for any definite time any shares that it purchased from you or anybody else? 1674

A. Not to my knowledge.

Q. What did you do when you transferred your shares of Northern Pacific and Great Northern to the Northern Secu-

1675 rities Company? Did you make a sale of them? What was done?

Mr. Munn. I think he has testified to that, Mr. Grover, pretty fully.

Mr. Grover. Well, if he said a sale it was a sale.

Q. You talk about it as being a transfer and exchange. I want to know if you parted with the title.

A. I parted with the title entirely and took stock in the Northern Securities Company.

Q. And made the necessary transfers to that end?

1676 A. Yes, sir.

GEO. F. BAKER.

Subscribed and sworn to before me this 15th day of January, 1903.

FREDERICK G. INGERSOLL,
Special Examiner.

The further taking of testimony in this cause was thereupon adjourned until January 14, 1903, at 11 A. M.

1677 City of New York, Jan. 14, 1903.

The hearing was resumed before the Special Examiner pursuant to adjournment, at the offices of the Northern Pacific Railway Company, 49 Wall street, at 11 A. M. All parties appeared.

It was admitted that the witness George F. Baker, whose testimony was taken yesterday, is the same George F. Baker who is one of the directors of the Northern Securities Company, and that the son of said Baker was one of the incorporators of the Northern Securities Company.

1678 SAMUEL THORNE, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION.

By Mr. Munn:

Q. Mr. Thorne, were you a stockholder in the Great Northern Railway Company during the year 1901?

A. Yes, sir. 1679

Q. About how much of the stock of the Great Northern Railway Company did you own at that time?

A. I can't tell you exactly, but my remembrance of it is about fourteen thousand shares; it may have been a little more or a little less.

Q. How long had you owned that stock?

A. I owned it ever since it was issued.

Q. Well, you had been the owner of it for some five or six years prior to that time?

A. Yes. 1680

Q. Did you own any Northern Pacific common stock in 1901?

A. I am not sure whether I did or not. I did own some Northern Pacific stock that I purchased from Mr. Morgan.

Q. That was purchased in the year 1901?

A. No.

Q. At the time of the reorganization of the Northern Pacific?

A. Yes.

Q. That was in 1895, or about that time?

Mr. Stetson. No; the purchase was made in 1897. 1681

Mr. Munn. Well, it is immaterial. The reorganization took place in 1895.

Mr. Stetson. In 1896.

Q. Do you remember whether you owned this stock in the year 1901?

A. I owned some of that stock in 1901.

Q. Did you acquire from any one any additional Northern Pacific common stock during the year 1901?

A. Yes, I did.

Q. About how much?

A. My impression is that it was about six thousand shares. 1682

Q. And from whom did you acquire that stock?

A. J. P. Morgan.

Q. A party of gentlemen have been referred to in the testimony by various witnesses, including Mr. Hill, Mr. Kennedy and Mr. James, as owning upwards of thirty-five millions of the stock of the Great Northern Railway Company, who had co-operated together more or less in voting that

1683 stock, also in sustaining Mr. Hill in his position in the Great Northern Railway Company. Were you one of those gentlemen?

A. I was one of those who supported him. There was no co-operation or understanding we would do anything of the kind. He always had my proxies.

Q. Well, I simply call your attention to that coterie to see if you were one of that body.

A. I don't know whether I was included in the body you refer to. I have been a holder of the stock ever since it was

1684 issued.

Q. Were you one of the coterie who desired to unify the holdings which you had in the Great Northern Railway Company, in either some holding company or some permanent form?

A. Yes, I was, sir.

Q. Did you have any talk with Mr. Hill during the summer or fall of 1901 regarding the organization of the Northern Securities Company?

A. Yes, sir.

Q. When did you first have any talk with Mr. Hill about

1685 that?

A. It would be impossible for me to tell you; I don't know, sir.

Q. Well, approximately, Mr. Thorne.

A. Well, it was when that talk was started, but I can't tell you, sir. My memory for dates is very poor. I was out of the city all that summer; I came in occasionally.

Q. Well, was it during the summer of 1901?

A. It was during the summer of 1901.

Q. What was the first talk you had with him about it? Can you give us the conversation, or the substance of it?

1686 A. I cannot. All I can tell you, Mr. Munn, is this: that we had been talking for years about a holding company, and that was simply with the idea of keeping together the stock in which we had been interested from the commencement of the railway's life.

Q. Of the Great Northern?

A. The Great Northern. And, as I say, it was talked of for several years just as we casually met one another. There

was never any coming together. This Northern Securities 1687
Company, I couldn't tell you when that was first talked of, the date.

Q. Well, dropping the exact date as to that first conversation, state as near as you can what that first conversation was.

A. Simply as to forming a company which should hold the railway stock that might be turned in to it and to hold other properties that might be of advantage to the railway.

Q. Did you have any talk about the Northern Securities Company, by that name? 1688

A. Not originally, no.

Q. I mean in 1901.

A. I can't tell you when the name of the Northern Securities Company was first mentioned. I have no remembrance of that whatever.

Q. You have no remembrance as to when the name was agreed upon?

A. No.

Q. You knew the fact that the name had been agreed upon some time prior——

A. (Interrupting) I knew that some time, but I don't know 1689
when the time was.

Q. —prior to the organization of the Northern Securities Company?

A. I had talked to Mr. Hill about the organization of this company, but nothing as to the name.

Q. Your talks were more to the purposes and objects of the corporation, rather than the name of it?

A. Yes.

Q. Now, was one of the purposes which you discussed with Mr. Hill the holding of the stock of the Great Northern Railway, which you and Mr. Hill and the other gentlemen making 1690
up this coterie had held for some time prior to that?

A. Well, yes.

Q. Did you also talk about holding the stock of the Northern Pacific in this same company?

A. Not in the beginning; I did not, sir.

Q. Well, I don't care about the beginning, but during the year 1901?

1691 A. Yes, during the year 1901 I did.

Q. That is, you talked to Mr. Hill during the year 1901 about organizing a corporation which should hold the Northern Pacific stock and the Great Northern stock?

A. Yes.

Q. Why were you desirous of forming a corporation to hold the stock of these two railway companies?

A. Well, as I told you, my interest was in the Great Northern Railway Company; my interest was not in the Northern Pacific.

1692 Q. But you had acquired some interest in the Northern Pacific?

Mr. Grover. Let him answer the question.

Mr. Munn. Pardon me; I thought he had.

Mr. Grover. No.

Witness. My object was to protect the interests which I held in the Great Northern.

Q. That is, your object in forming the Northern Securities Company was to protect the interests which you had in the Great Northern?

A. Yes.

1693 Q. Was anything said during these talks with Mr. Hill about your interests in the Great Northern being more secure and better protected provided the Northern Pacific common stock was turned over to this holding company?

A. I don't remember having any talk with Mr. Hill about it at all until after the effort was made to get control of the Northern Pacific stock.

Q. Let me state, Mr. Thorne, that in the questions I ask now I am confining myself to the year 1901; not prior to that time.

A. Yes, sir.

1694 Q. Now, in the talks you had with Mr. Hill during the year 1901, wherein you discussed the formation of a company which was to hold the stock of both the Great Northern and the Northern Pacific, did Mr. Hill tell you that your interests in the Great Northern would be better preserved and protected provided such——

A. (Interrupting). I have no remembrance of his telling me any such thing.

Q. Pardon me. Let me finish my question. Provided such 1695
a holding company should acquire the stock of the Northern Pacific as well as of the Great Northern?

The question in full was read to the witness.

A. No, sir; I have no remembrance.

Q. Well, you say you talked with Mr. Hill about such a company acquiring both the stock of the Northern Pacific and the Great Northern?

A. I said that that was so, but I have no remembrance of that being until after a certain date—that he spoke to me about that. Then it was self-evident that it was for the interests of the Great Northern. 1696

Q. That was after May 9, 1901?

A. Yes.

Q. But I say, Mr. Thorne, that I am confining my question to that time.

A. To the time prior to May?

Q. Subsequent to May 9, 1901.

A. Oh, yes.

Q. Now I repeat that question.

A. No, no, he didn't say. I will give the same answer. I have no remembrance of his ever talking to me about it. 1697

Q. How did you come to be talking with Mr. Hill, then, about this holding company, or the company which was to be formed, acquiring the stock of the Northern Pacific? What was said in that connection? What led up to it?

A. Well, of course it became self-evident to me that it was to the interest of the Great Northern Company that the Northern Pacific stock should be put in such condition that it could not be used against the interests of the Great Northern Company.

Q. That is, the stock of the Northern Pacific should be put so that it could not be used against the interests of the Great 1698
Northern Company?

A. Yes.

Q. That is, in these talks it was stated by Mr. Hill and yourself that it would be for the interests of the Great Northern Railway Company to have the ownership——

A. (Interrupting). I don't think we ever discussed it. It

1699 was self-evident to me. I don't think we ever discussed that question at all.

Q. The parties, then, who had in view the formation of the Northern Securities Company, including yourself, were of the belief that it was for your interests——

A. (Interrupting). That was my belief. I don't know about the others.

Q. Your belief, then, was—in the part that you took in the formation of the Northern Securities Company—that it was for your interests as a stockholder of the Great Northern
1700 Railway Company that the control of the stock of the Northern Pacific should be placed where it would be permanently fixed, so that it could not be used against the Great Northern?

A. Yes.

Q. You knew, did you not, when you were having these talks with Mr. Hill, that Mr. Morgan and his associates owned a majority of the common stock of the Northern Pacific?

A. I knew it after it was known by everybody; I didn't know it before.

Q. You knew during the summer of 1901 that such was the fact?

1701 A. Yes; I knew it was said to be the fact. I didn't know it of my own knowledge. Mr. Morgan had not told me so.

Q. And you also knew that it took the holdings of Mr. Hill and yourself and some other stockholders of the Great Northern Railway Company to make up the majority of the common stock of the Northern Pacific?

A. Ask that again, please.

Q. You knew, Mr. Thorne, at this time that it took the holdings of Mr. Hill and yourself and your associates in the Northern Pacific stock to make up a majority of that stock, together with those of Mr. Morgan?

1702 A. That is what I supposed.

Q. Now, Mr. Thorne, did Mr. Hill tell you in any of these talks that he had with you in the summer of 1901 regarding the formation of the Northern Securities Company, that Mr. Morgan and his associates would turn their holdings of Northern Pacific common stock into this Northern Securities Company?

A. I can't recall whether he did or not, sir. I don't know.

Q. Well, you say you were desirous of having the Northern 1703
Pacific stock, at least, fixed in some holding company?

A. Yes.

Q. Now, didn't Mr. Hill tell you that—

A. (Interrupting). Possibly he may, but I don't remember.

Q. Then, how did you know that that would be accomplished by the organization of the Northern Securities Company?

A. I didn't know it; I took it for granted it would be. Of course it was to their interest to do it.

Q. Then, it was generally understood between you and your associate holders of Great Northern stock that by the 1704
formation of the Northern Securities Company the control of the Northern Pacific would be placed in the manner you have indicated?

Mr. Clough. What do you mean by "generally understood"?

Witness. Well, I was going to ask what you meant by "generally understood." I can only answer for myself. I never had any talks with any other gentlemen as to whether they were going to put their stock in or were not going to put their stock in. 1705

Q. How did you come to assume it would be done?

A. Because it was so evident on its face.

Mr. Clough. These men are not all asses down here, Mr. Munn.

Mr. Stetson. (Laughing). Only some of us.

Mr. Munn. I have never assumed, Mr. Clough, that any of you were asses. On the contrary, some of you are very shrewd men.

Q. What was evident?

The last few answers of the witness were read.

Q. Mr. Thorne, didn't you talk with Mr. John S. Kennedy 1706
about it?

A. Oh, yes, I talked to Mr. Kennedy; I talked to several of the people—Mr. James.

Q. Did you talk to Mr. James about it?

A. I did, sir.

Q. Did you talk with Col. Clough about it?

A. I think very possibly so.

1707 Q. Did you talk with Mr. Baker about it?

A. I think that is probable, too.

Q. Did they all express the same belief regarding this matter that you entertained?

A. I should think they did; I think they were all of the same mind.

Q. Therefore, you did know that these other gentlemen——

A. (Interrupting). I only knew we all thought it would be for our interests.

Q. When you say "for our interests," you mean as stock-
1708 holders of the Great Northern?

A. I mean our individual interests.

Q. No, you mean your interests as stockholders of the Great Northern Railway Company?

A. Yes.

Q. Is that right?

A. Yes, that is what I mean.

Q. When did you first learn the basis of exchange of the Great Northern and Northern Pacific for Northern Securities Company stock?

A. When it was generally known; I can't give you the date.

1709 Q. Can you give us the date within a month?

A. I couldn't give you anywhere near the date.

Q. Did you learn it in the summer of 1901?

A. I think it was in the fall of 1901. It was when it was generally known. I don't think anybody knew it more than a day or two before everybody knew it.

Q. Well, it was some time prior to the organization of the Northern Securities Company?

A. I think it was just at the time of the organization of the Northern Securities Company; that is my remembrance, but I don't know just what the date was.

1710 Q. Mr. Hill has testified that he fixed that basis sometime in July, 1901.

A. Probably that is correct, if he so testified.

Q. Was that the time you knew of it?

A. I can't tell you that at all.

Q. Who did you learn it from?

A. That is impossible for me to tell; I don't know.

Q. Did you take any part in fixing that ratio?

A. No, sir, I did not. 1711

Q. Did you take any part in the formation of the articles of incorporation of the Northern Securities Company?

A. No, I didn't take any part.

Q. Were the terms discussed by anybody with you?

A. Only in a general kind of way; there were no details discussed.

Q. Who talked with you about them?

A. I don't remember that I had any talk with anybody about them. If there was any talk it was with Mr. Hill and Mr. Clough as I would go in the office there. But there was never anything more than general talk about it. 1712

Q. Did they tell you what powers would be incorporated in those articles?

A. Not in detail, no, sir.

Q. You left it, Mr. Thorne, as I assume, then, almost entirely to Mr. Hill and Mr. Clough?

A. I did.

Q. The Northern Securities Company was incorporated in fact about the middle of November? That is the case.

A. Yes.

Q. Now, did you see those articles before they were filed? 1713

A. I think not.

Q. Did you make any suggestions as to the terms of the articles of incorporation?

A. No, sir, not that I can recall. I am sure I did not.

Q. Then, to sum it all up, Mr. Thorne, the purpose you had in mind in consenting to turn your stock in to the Northern Securities Company—your stock in both the Great Northern and the Northern Pacific—was to fix the control of the Northern Pacific in a permanent way so that it could never be used to assail your interests in the Great Northern?

A. In taking the Northern Securities Company stock my 1714 interest was in both of the companies.

Q. Yes, but you have testified that your interests were largely with the Great Northern.

A. Yes, they were,—more largely with the Great Northern than with the Northern Pacific.

Q. And it was that interest and ownership that you desired to protect?

1715 A. Yes. But when I became a shareholder in the Northern Securities Company then of course I recognized the fact that it would be for the interest of both of those properties to be together, where they would not antagonize one another to their harm.

Q. You mean, then, that it was for the interests of the stockholders of both companies that the stock of those two companies should be held by one corporation, so they would not antagonize one another?

A. So no person could get possession of the one to antagonize the other.

1716 Q. Did you discuss with Mr. Hill or Mr. Kennedy or Mr. James during the summer of 1901 the necessity of retiring the preferred stock in order to acquire absolute control of that company?

A. No, sir.

CROSS-EXAMINATION.

By Mr. Grover:

Q. Have you in mind any single conversation with Mr. Hill
1717 or any of these gentlemen named, which you can relate, with reference to the matter under inquiry?

A. I can't say that I have any special recollection.

Q. I understand that whatever was said was casual, as you met each other in a general way?

A. Yes; we never had any meeting. Just met one another in a casual way and talked about it.

Q. You knew of the fact of the purchase by the Great Northern and the Northern Pacific of the Burlington shares, did you not?

A. Yes, sir.

1718 Q. And that the Great Northern and Northern Pacific had executed joint and several bonds to the amount of two hundred millions or over?

A. I did.

Q. The rate of interest on the bonds was four per cent, was it not?

A. Four per cent.

Q. Equivalent to eight per cent dividend on the Burlington 1719
shares?

A. Yes.

Q. What effect did you think it would have upon your holdings of Great Northern shares or Northern Pacific shares if the purchase by the Union Pacific of Northern Pacific shares had gone on and been sustained and it had acquired control of the property?

A. It would have been very serious, I think.

Q. Why?

A. Well, of course those two companies were equally pledged for the payment of this interest, and if either one of 1720
them had been taken by an adverse interest the treatment of it might have been such that it would have been unable to meet its obligations, and it would all fall upon one company instead of upon the two.

Q. When you say, then, that you desired to protect your Great Northern interests, you thought it was a measure of protection to have the Great Northern and Northern Pacific shares held by some one single interest?

A. Yes.

Q. Where they could be held in a large mass and voted to- 1721
gether; isn't that your point?

A. That is it, yes, sir.

Q. Did you ever hear of any suggestion or understanding that the Northern Securities Company was not at liberty to sell the stock it had purchased whenever it saw fit?

A. Oh, no.

Q. Now, in doing what you did, had you any purpose or thought of suppressing competition in traffic between the Great Northern and Northern Pacific roads?

Mr. Douglas. That is objected to as incompetent, immaterial and not proper cross-examination. 1722

A. No.

Q. Was ever such a thing discussed or suggested in any conversation that you had?

Mr. Douglas. Same objection.

A. Never to my knowledge.

Q. Did you have any such intent?

Mr. Douglas. Same objection.

1723 A. No, sir, I did not.

Q. Now state whether you sold, transferred, parted with the title of your Great Northern and Northern Pacific shares to the Northern Securities Company.

A. I sold them to that company.

Q. And have no interest in the Great Northern and Northern Pacific shares which you sold to the Northern Securities Company?

A. No, sir, none whatever.

Q. And that company, so far as you know, is free to sell
1724 those shares to anybody?

A. Yes, sir.

Q. On the market or elsewhere?

A. I so understand it.

RE-DIRECT EXAMINATION.

By Mr. Munn:

Q. As a stockholder and director of the Northern Securities
1725 Company would you consent to the sale by that company of its Northern Pacific holdings to an interest which would put that company in competition with the Great Northern?

A. I do not know, sir. It would depend on what the proposition was.

Q. So far as you know now you would not, would you?

A. Well, as I say, I can't tell till the proposition be made.

Q. Well, your intention was to fix it so that could not occur, wasn't it?

A. That they could be sold?

1726 Q. No, to fix it so that it could not be placed in competition with the Great Northern.

A. Well, there never was any idea as far as my thought was concerned of doing away with competition in so far as traffic was concerned. It was to protect the interests of those two properties. They were jointly interested in a very large obligation. I never heard it discussed that there

should be any prevention of competition or any difference in 1727
the management of the roads from what it had been before.

Q. You say you desired to put the Northern Pacific stock where it would not be used in a way antagonistic to the Great Northern.

A. My remembrance is that I said both the stocks,—that I wanted to put both stocks in such condition that the one could not be used against the other. That is my remembrance of the answer I made.

Q. Well, perhaps that is correct. And you knew that was what would be accomplished by the formation of this North- 1728
ern Securities Company?

A. What would be accomplished?

Q. Just what you stated you desired to accomplish.

A. That neither property could be bought by an adverse interest?

Q. Yes. And neither could be put in opposition to the other?

A. I don't know what you mean by "neither could be put in opposition to the other."

Q. Well, they would be worked together harmoniously.

Mr. Clough. What do you mean by that?

Mr. Munn. Just what I say. 1729

Mr. Clough. What do you mean by "worked together harmoniously"?

Mr. Munn. Just what I say.

Witness. I don't know what you mean by "worked together harmoniously."

Mr. Munn. Well, you understand that language, Mr. Thorne?

A. Well, yes. I don't suppose that they would get in any fight, if that is what you mean by it.

Q. Or any controversy with each other? 1730

A. I wouldn't say that, because I presume they do get in controversy with each other; not to any great extent, nothing serious. Two roads running together that way there is more or less controversy. I can't see how it can be helped.

1731 By Mr. Douglas:

Q. As a member of the directorship of the Northern Securities Company have you ever taken any action authorizing the sale of the Northern Pacific common stock?

A. No, sir, not that I remember. No, there has never been any authorized sale of the Northern Pacific stock.

Mr. Clough. That is right, there never has been.

Witness. No, there never has been.

Mr. Clough. Nobody has ever made any offer for it.

SAMUEL THORNE.

1732

Subscribed and sworn to before me this 15th day of January, 1903.

FREDERICK G. INGERSOLL,
Special Examiner.

The Examiner. When we were here in New York before taking testimony in this cause, we took the testimony of the witnesses W. P. Clough, E. T. Nichols and John S. Kennedy.

1733 A transcript of the testimony so taken was submitted to the witnesses and, before being signed by them, was in some respects changed. Upon the return of the Examiner to St. Paul the attention of all parties was called to these changes, and it was then arranged that a foot-note should be inserted in the printed record showing the changes above referred to. I want to say now, in view of the fact that all parties are here in this city and that the witnesses are here, that if there is any desire on the part of any of the parties to this cause to examine further into those changes or to re-examine the witnesses, that the transcript of the testimony is here upon

1734 the table subject to the use of all parties and, if desired, the witnesses can be recalled now or before we return to St. Paul, as may be arranged. But let it be understood that no foot-notes will be inserted to indicate any of the changes made.

Thereupon the further taking of testimony was adjourned until January 15, 1903, at 2 P. M.

1735

City of New York, November 21, 1902.

The taking of testimony was resumed at 11 a. m., pursuant to adjournment.

All parties were represented.

D. WILLIS JAMES, sworn as a witness on behalf of the complainant, testified as follows:

DIRECT EXAMINATION.

1736

By Mr. Munn:

Q. Your full name is D. Willis James?

A. D. Willis James.

Q. During the year 1901, and prior to November 13th, were you a stockholder in the Great Northern Railway Company?

A. I was.

Q. And also in the Northern Pacific?

A. I was.

Q. About how much stock did you own in the Great Northern Railway Company?

1737

A. I think about thirty-five thousand shares, but I will not swear positively to it, sir.

Q. And about how much in the Northern Pacific?

A. Do you mean early in 1901?

Q. No; after the panic of May 9, 1901.

A. I owned at the time of the panic in 1901 six thousand shares of common and twelve hundred (and possibly a few odds) of preferred.

Q. Did you acquire any more Northern Pacific preferred after May 9, 1901, during the year 1901?

A. I did.

1738

Q. How much?

A. About five thousand shares.

Q. Did you get those from J. P. Morgan & Co.?

A. I did.

Q. How did you come to acquire that stock?

A. I purchased it.

Q. Yes, but at whose suggestion?

1739 A. Mr. Hill told me I could purchase some of it, and I purchased it.

Q. Did he request you to do it?

A. He did not.

Q. Did you take that stock before or after July 1, 1901?

A. After July 1st.

Q. Do you know W. P. Clough?

A. I do.

Q. Did you have any conversations with him during the summer of 1901 looking toward the organization of a holding company for Northern Pacific and Great Northern stock?

1740 A. I did.

Q. When did those conversations first begin?

A. I think early in May.

Q. Before or after the panic of May 9, 1901?

A. Before the panic. Possibly one or two days after the panic. Within a few days from that time I was ill and did not come to my office again until after the 1st of July.

Q. Well, you think, then, it was somewhere between May 1st and May 11th that you had the first conversation?

A. I think it was. Possibly it was the end of April; prob-

1741 ably early in May.

Q. How did you come to have that conversation? What led up to it?

A. For years there had been a good deal of talk amongst the old parties who had held Great Northern stock, of the formation of a holding company, or of something of that character, to hold the stock.

Q. To hold the stock of what?

A. Of the Great Northern.

Q. That talk began about the time of the so-called Pearsall case against the Great Northern Railway Company?

1742 A. No, sir.

Q. Do you remember that case?

A. I have heard of it, yes, sir.

Q. Was it subsequent to that time?

A. No, sir; long before that time; long before the formation of the Great Northern at all.

Q. When did this talk first begin, Mr. James?

A. I should think it was as long ago as 1887 or 1888.

Q. Now, there were certain gentlemen (of whom you were one) who held quite a large block of Great Northern stock, upwards of 35 millions, as I understand it, as the stock was finally issued. Is that right? 1743

A. Of the Great Northern stock?

Q. Yes.

A. Yes, about that, as far as I know.

Q. That is yourself and Mr. Kennedy——

A. And Mr. Hill and Mr. Thorne.

Q. Mr. Baker?

A. Well, Mr. Baker was not as early a holder as I should say Lord Mount Stephen (who was Mr. George Stephen) and Lord Strathcona. 1744

Q. Now, it was among those gentlemen that this talk had taken place?

A. Yes, sir, for years before.

Q. You gentlemen had always co-operated in Great Northern matters, had you not?

A. We had held our stock. I don't know exactly what you mean by "co-operating," sir.

Q. Well, Mr. Hill was president of the Great Northern Railway Company?

A. He was. 1745

Q. And you looked to him to manage the property and direct its policy, did you not?

A. We did.

Q. And you co-operated with him, so far as the voting of your stock was concerned, to carry out whatever he desired, did you not?

A. No, sir,—not whatever he desired. We gave our proxies to him so long as we thought the property was being managed for the best interests of the company and the stockholders. Absolutely independently. 1746

Q. You had no occasion to ever withdraw your support of Mr. Hill?

A. We had not, sir, because we were satisfied.

Q. Therefore, you always gave him whatever support he needed, so far as the voting of your stock was concerned?

A. We sent him our proxies, each one of us.

Q. And that amount of stock in the Great Northern, work-

1747 ing together, would ordinarily control any election, would it not?

A. That would be a question, whether it would or not.

Q. Well, it did in fact, did it not?

A. No, sir, I don't think it did in fact, because the majority of the stock was outside of those few gentlemen; and, so far as I understand it, almost the entire body of stockholders sent their proxies to Mr. Hill.

Q. Now, it was the desire of you gentlemen to keep your holdings united, as far as possible?

A. As far as possible, yes.

1748 Q. What was the purpose of that? Why did you want to keep them together?

A. Because we believed it was for the best interests of the company and for the best interests of the territory and the states that were served by the company.

Q. You say you desired to keep it united. You must have had some definite idea in mind. Was it because you wanted through that union to give Mr. Hill your unanimous support as long as he satisfied you?

A. No, sir.

1749 Q. What purpose did you have in keeping it united?

A. Simply because we thought it would be for the interests of the company that we should work together in that way.

Q. Do you mean in the interests of you gentlemen or in the interests of the company as well?

A. The interests of the company.

Q. Did you not consider your own interests at that time?

A. We did. We thought our interests and the interests of the company and the interests of the states it served were all one. I think so still.

1750 Q. And your idea was to get the stock held by the gentlemen whom I have named and some others whom we will characterize as your friends and Mr. Hill's—you desired to keep that stock together as much as possible all the time?

A. Yes, sir.

Q. Now, with whom did you talk besides Mr. Clough regarding the formation of the Northern Securities Company?

A. You mean in 1901?

Q. Yes. 1751

A. With no one. Possibly once with Mr. Hill, but I cannot swear to that, I can't be sure that I did. Mr. Kennedy was away and I had no conversation with anyone except Colonel Clough until after I met Mr. Kennedy sometime late in the summer, probably in August or the end of July, at Bar Harbor.

Q. Did you talk with him then about it?

A. I had some conversation with him about it, yes, sir.

Q. What talk did you have with him about it?

A. Only to the extent that he had had some conversation 1752
of importance soon after the raid of the 9th of May; that some holding company, or something of that character, should be organized to carry out the designs or the plans we had had for so many years past, and it seemed to be——

Q. What plans or designs do you refer to?

A. Having some company or some way—trust company or some other way—by which these gentlemen that you have referred to should hold their stock together, in case of death or other emergency.

Q. Why did you desire to keep that stock together, Mr. James? 1753

A. Because, as I said before, sir, we thought that it was for the interests of the company, the interests of the territory that was served by it, and our own personal interests.

Q. Were you afraid, after the raid of May 9th, that some other company or some other set of people might come in and attempt to buy a controlling interest in the Great Northern Railway Company?

A. Of course the raid that was made upon the Northern Pacific at that time did indicate and show that it was within the possibilities that a raid could be made on the Great Northern. 1754

Q. And you desired to have your interests united in such a way that you could always co-operate in opposition to any such plan?

A. Yes, sir.

Q. Well, who else did you talk with after that about the formation of this company, the Northern Securities Company?

1755 A. No one else, unless I may have said a few words to Mr. Hill when I met him very casually for a few moments in Bar Harbor, but it was a very short time till I returned to the city, possibly in October. I had some conversation then with Mr. Kennedy, Mr. Thorne and with Mr. Hill, I think.

Q. Had the plan for the formation of the Northern Securities Company been thoroughly matured at that time?

A. No, sir.

Q. Had you seen a charter of the proposed company?

A. I had not, sir.

Q. Did you ever see one before the company was organized?

1756 A. No, sir.

Q. Did anyone state to you the contents of any charter that they proposed to adopt in forming this company?

A. No, sir.

Q. Did you make any suggestions as to the phraseology of such a charter?

A. No, sir.

Q. To whom was that left?

A. I suppose to Mr. Hill.

Q. Mr. Hill and Mr. Clough?

1757 A. I didn't know that Mr. Clough was looking after that matter, but I supposed Mr. Hill was.

Q. Did you talk with Mr. Hill or Mr. Clough or Mr. Kennedy regarding the amount of the capital stock that this company should issue?

A. It was first spoken of that the company should be large enough to hold the Northern Pacific stock that was held by these gentlemen (these friends), and also the Great Northern stock that they held; something like—you say 35 millions. I didn't suppose it was quite as much as that.

Q. Now, these gentlemen that you refer to, including your-

1758 self and Mr. Hill and Mr. Kennedy and the others who formed this coterie, at that time actually owned a majority of the common stock of the Northern Pacific Railway Company?

A. That I couldn't state of my own knowledge, sir.

Q. Well, did you not know, Mr. James, after the storm of May 9th had disappeared, that it developed that Mr. Morgan, Mr. Hill, yourself, Mr. Kennedy and these other gentlemen who were working together so far as the Northern Pacific

stock was concerned, had actual ownership of a majority of 1759
the common stock?

A. Yes, sir, but you didn't mention Mr. Morgan's name at all before. It was the other gentlemen you were speaking of.

Q. And you understood the plan to be to turn in the holdings of these gentlemen in the Northern Pacific, including Mr. Morgan?

A. Yes, sir.

Q. Into this Northern Securities Company?

A. Yes.

Q. That would give the Northern Securities Company a 1760
majority of the common stock of the Northern Pacific?

A. Yes, sir.

Q. And you gentlemen were to turn in the holdings that you had in the Great Northern Railway Company?

A. Yes, sir.

Q. And I suppose the company was to acquire such other Great Northern stock as the stockholders saw fit to surrender?

A. That was afterwards discussed and it was considered that it was fair and right to offer it to the other stockholders, because the Great Northern Railroad had never had any in- 1761
side rings of any kind.

Q. Now, Mr. James, when was the understanding reached that you gentlemen should turn in all of your Northern Pacific common stock (which was a majority) and such Great Northern stock as yourself and Mr. Hill and his friends and associates (forming the coterie you have referred to) held?

A. I can't fix the date. I should think it was probably the end of October or early in November.

Q. That was prior to the time the Northern Securities was actually organized, of course?

A. I don't know the date when the Northern Securities 1762
Company was organized.

Q. It was organized November 13, 1901.

A. I didn't know that.

Q. So that before the Northern Securities Company was actually organized as a corporation, it had been agreed between you and Mr. Hill and Mr. Kennedy and the other gentlemen forming the coterie who held about 35 millions of the

1763 Great Northern stock, and yourselves and Mr. Morgan and the other holders of the 42 millions of Northern Pacific stock, that that should all be turned in to the Northern Securities Company when organized?

A. Yes, sir.

Q. Now, in the talk that you had with Mr. Hill or Mr. Kennedy or Mr. Clough or any of the other gentlemen with whom you talked regarding the formation of this company, was anything said about retiring the preferred stock of the Northern Pacific?

1764 A. Not in connection with the formation of the company, that I can recall.

Q. Well, in these talks that you had with these gentlemen regarding the formation of the Northern Securities Company, was the fact mentioned that the stockholders of the common stock would retire the preferred stock of the Northern Pacific?

A. I had always understood long before that that the preferred stock of the Northern Pacific was to be retired.

Q. When did you first understand that?

A. In a very early conversation that I had with Mr. Coster.

1765 Long before Mr. Coster's death he spoke of that.

Q. Well, no steps were taken towards the retirement until the year 1901?

A. There could not be, as I understand it, because the voting trust had not been abolished.

Q. You could not retire the preferred stock until after the voting trust was dissolved?

A. That is as I understand it.

Q. That was dissolved the fall or early winter preceding 1901?

A. I think it was.

1766 Mr. Clough. Took effect January 1, 1901.

Mr. Young. What do you mean by the early winter preceding 1901?

Mr. Munn. December would be a winter month, and preceding 1901. I understood it was sometime in the fall of 1900 they decided to dissolve it, and did dissolve it in fact in January, 1901.

Mr. Clough. Yes.

Q. Now, was there any talk between yourself and Mr. Hill 1767
or Mr. Kennedy or any of these other gentlemen to whom you referred about retiring the preferred stock, after the May 9th panic?

A. I can recall none then, no, sir. I may answer further in regard to that, that Mr. Kennedy was away; I didn't see Mr. Kennedy at that time at all, and didn't see him from January up until the end of July, or early in August.

Q. I understood you had a conversation with him sometime in the latter part of the summer of 1901 or the early fall.

A. Yes. 1768

Q. Now, you understood when this arrangement was made by which you gentlemen were to turn your holdings into the Northern Securities Company, that the preferred stock would be retired?

A. Yes, sir.

Q. And you understood it would be retired on January 1, 1901?

A. I couldn't state the date definitely; I understood it was to be retired.

Q. It was to be retired.

A. I don't recall that there was any understanding of a 1769
fixed date.

Q. You knew at that time, unless it was retired, that you gentlemen didn't have control of the Northern Pacific, did you not?

A. I supposed, if it included the preferred, that a majority was in the hands of the Harriman or the Union Pacific party.

Q. Therefore, you knew at that time, when you and your friends and associates had agreed to turn your holdings in to the Northern Securities Company when organized, that unless the preferred stock of the Northern Pacific was retired that you would not carry a controlling stockholding of the North- 1770
ern Pacific into the Northern Securities Company?

A. That is so, yes.

Q. Now, you say, Mr. James, you desired—you and your associates, friends, and Mr. Hill—to keep your Great Northern holdings united as far as you could? Of course, when you agreed to surrender those holdings to the Northern Securities Company, you expected that union would continue

1771 there just the same, did you not, and that you would have the same power and exercise the same control in the Great Northern Railway Company that you had prior to the time the Northern Securities Company should take your stock?

A. Well, the number of shares of stock that the Great Northern stockholders held didn't give a control of the Great Northern.

Q. I understand it didn't give an actual majority, but it had always exercised the control?

A. No, sir.

1772 Mr. Young. He has not so stated.

Witness. No, sir, by no means.

Q. Well, Mr. James, you expected—you and your associates and friends expected, through the Northern Securities Company, to exercise just as much control over the policy and conduct of the Great Northern Railway Company as had been exercised by you individually, did you not?

A. We didn't exercise control, sir.

Q. I didn't ask you that. I say you expected to exercise the same amount of control.

Mr. Young. "If any," you had better put it.

1773 Witness. I don't know how to answer that question, sir, because it is not——

Mr. Munn. Well, perhaps I am pretty dense on it. I will see.

Witness. No, I didn't say that, sir.

Q. You gentlemen had always co-operated in Great Northern matters?

A. Up to that time we had co-operated.

Q. Now, you expected the same power that you had exercised prior to the time you surrendered your holdings to the Northern Securities Company, would be exercised by or

1774 through the Northern Securities Company,—not necessarily a control, but the same power that you had exercised before would be exercised there by the Northern Securities Company?

A. If the holders of it saw, as they had before, that it was to their interest to give the proxy to Mr. Hill or to other gentlemen, they would do so; but there was no agreement,

and therefore I cannot see how you can say there was ex- 1775
pectation.

Q. Well, in surrendering your stock to the Northern Securities Company, you didn't believe that you were surrendering the control which your holdings had exercised in the Great Northern, did you?

A. Our holdings hadn't exercised control, sir; I have tried to make that plain, as far as I understand it.

Q. Well, perhaps they didn't exercise control in that you owned a majority of the stock, but there had never been a time when Mr. Hill, with your aid and of such other stockholders as gave him proxies, had failed to control the Great 1776
Northern, had there?

A. There never was a time when a majority of the stockholders of the Great Northern did not wish Mr. Hill to continue in his management.

Q. We concede that. I say there never was a time when he did not in fact actually control and dominate the Great Northern?

A. Because he was sustained there by a majority of the stockholders.

Q. Mr. James, would you have surrendered your Great 1777
Northern stock in exchange for the Northern Securities Company stock, if you had believed that by so doing any other interest than you and your associates in the Great Northern, as you had existed prior to that time, would have had control of the Great Northern Railway Company?

A. I can't answer that question, sir, because we had not control of the Great Northern Railway; we never had control of the Great Northern Railway Company.

Q. I think, Mr. James, it is a fair question. I will have to ask you to answer it.

1778

The question was read.

Mr. Munn. It does not, you see, assume that you had control.

Mr. Young. It does. It assumes that some other interest than your interest would have control.

Q. Do you understand the question, Mr. James?

A. I do not, sir.

The question was again read.

1779 Witness. No suggestion of it ever came up in my mind, and I cannot answer that question, sir, as you have put it.

Q. Well, Mr. Hill had always controlled the Great Northern Railway Company by vote of the stockholders, including you gentlemen who made up his immediate associates?

A. He had for many years, yes, sir.

Q. Now, would you have surrendered your holdings of Great Northern stock to the Northern Securities Company if you believed by so doing you were going to deprive Mr. Hill of that control?

A. No, sir.

1780 Q. You also knew that by turning in a majority of the Northern Pacific common stock and retiring the preferred stock, you were turning over the control of the Northern Pacific to the company that you were surrendering your stock to, of course?

A. Yes, sir.

Q. You also knew that the capital stock of the Northern Securities Company was fixed at a sum sufficient to take in all of the common stock of the Northern Pacific and also all of the stock of the Great Northern?

1781 A. It was not so fixed in the beginning.

Q. But when it was finally consummated, it was fixed at that?

A. Not all the stock of the Great Northern, because we had no reason to expect that all of the stock of the Great Northern would come in.

Q. No, but the amount of the capital stock of the Northern Securities Company was fixed at a sum sufficient——

A. Sufficient, yes, sir.

Q. —to take in all of the Great Northern stock and also all of the Northern Pacific stock?

1782 A. Yes, I think it was.

Q. You also knew, did you not, the rate at which the Great Northern and Northern Pacific stocks were to be exchanged for the Northern Securities Company stock?

A. Yes, sir.

Q. When was that determined?

A. I do not know.

Q. Did you have any voice in its determination?

A. I did not. 1783

Q. You accepted the rate as fixed?

A. For myself?

Q. Yes, sir.

A. Yes, sir.

Q. Without demurrer?

A. Without demurrer.

Q. When was this agreement finally reached by you gentlemen, holding the 35 millions, or about 35 millions of the Great Northern stock, that you would all turn your Great Northern holdings into the Northern Securities Company on the basis named, when such corporation was formed? 1784

A. I don't know. I had no conference with anyone at all on the subject except casually speaking to Mr. Kennedy and possibly to Mr. Hill and Mr. Thorne, on the subject.

Q. But a time finally came when you all decided or agreed that you would turn your stock in?

A. Not jointly; we decided it ourselves.

Q. Well, not "turned in" jointly, but individually.

A. Yes, we turned it in individually.

Q. Now, I say when did you reach that conclusion among yourselves? 1785

Mr. Grover. He didn't say they reached any conclusion among themselves. Why do you assume it, when he says they didn't?

Mr. Munn. I think the testimony shows they did.

Mr. Grover. You are assuming what the witness said did not exist.

Witness. There was no conclusion reached definitely amongst ourselves at all. Each one acted for himself.

Q. I suppose you each one acted for himself when you turned your stock in, but you had all decided, prior to that time, that you would turn your stock in, had you not? 1786

A. I think it was all understood. Whether we would turn it all in or not, there was never anything agreed upon at all, or never any agreement amongst ourselves to turn it in, but I supposed each one had decided for himself to turn it in before that time.

Q. And you understood that when you decided to turn yours in, I suppose?

1787 A. No, sir, I turned mine in on my own responsibility, because I thought it was to my advantage.

Q. Mr. James, you have testified here at considerable length that you gentlemen all desired to keep your holdings united.

A. Certainly.

Q. And that you decided to turn them in to the Northern Securities Company so that they would remain united.

A. That is true.

Q. Then, didn't you have some understanding among yourselves that you would all turn your stock in?

1788 A. No, sir, no agreement whatever among ourselves.

Q. I say didn't you have some understanding among yourselves?

A. No, sir.

Q. Wait until I finish my question.

A. I beg your pardon.

Q. Didn't you have some understanding among yourselves that you would all turn your stock in to the Northern Securities Company when organized?

A. There probably was an understanding that we would all put in our stock; not all of it, perhaps, we were not obliged

1789 to do that, we were not obliged to put in the whole of it, but any part of it we chose. It was entirely the individual act of each one.

Q. But you would not have accomplished what you were seeking to accomplish unless you did turn it in, would you?

A. We would have held it. If we didn't turn our old stock in, the Great Northern stock, we should have held the balance of our stock as Great Northern, and what we turned in as Northern Securities Company.

Q. But I understand, Mr. James, from your testimony, that you and your associate holders of Great Northern stock de-

1790 sired to perpetuate that unity of holding?

A. That had been the object from the beginning.

Q. Then, you say one of the reasons why this Northern Securities Company was formed was to perpetuate that unity of holding?

A. Yes, sir.

Q. Then did you not have some understanding, in order to

accomplish that purpose, that you would all turn your stock in? 1791

A. No, sir, no agreement or understanding between ourselves that we would all turn our stock in.

Q. How did you expect to perpetuate that unity of holding, then?

A. Because they all acted together, but there was no agreement among ourselves at all. There was no agreement; never has been any that I know of.

Q. Well, I don't care about any written agreement or anything that one stockholder felt he could enforce against the other, but wasn't it understood between you? 1792

A. No, sir.

Q. Then you didn't turn your stock in to the Northern Securities Company for the purpose solely of perpetuating this unity of ownership, did you?

A. Yes, sir, we did; but we had not agreed amongst ourselves that we would turn it all in. There was no such agreement as far as I can recall. Certainly I never agreed to turn all mine in at all; no agreement whatever.

Q. Can you explain to me then, if you did not agree to turn your holdings in and did not turn them in for the purpose of perpetuating that unity of ownership, why you did turn it in? 1793

A. It was thought wise and best to do it. I can't give you any other reason than that.

Q. Who suggested it was wise and best?

A. I suppose we all thought so. I know no one suggested it to me. I did it on my own responsibility, as I should do it again if I chose.

Q. Well, Mr. James, you say that you had no voice in fixing the rate——

A. No, sir.

Q. —at which you would surrender your stock for Northern Securities Company stock? 1794

A. No, sir, I had no voice in it at all. I wasn't here at that time.

Q. And yet you came right up to the threshold of this new corporation and turned your stock in and took the stock of that company in exchange for it?

1795 A. Of Northern Securities Company, yes, sir.

Q. Without a suggestion from anybody?

A. I didn't say that at all.

Q. Then, without suggestion from anybody, or without any understanding among you gentlemen who had held the 35 millions of Great Northern stock, you surrendered your stock to the Northern Securities Company, and took its stock in exchange therefor at 180, without knowing or without any understanding between you and these other gentlemen that they would turn theirs in?

1796 A. I didn't say that, sir.

Q. Did you have such understanding?

A. We had no understanding that they would turn it all in. I supposed they would turn some of theirs in, and perhaps all of it; but there was no agreement or understanding between us at all that we would, each for himself, turn in the stock. There was no agreement of that kind whatever, as far as I know. I certainly made no such agreement.

Q. Well, you all did turn it in, in fact?

A. That I can't answer, sir.

Q. You turned in all of yours?

1797 A. I turned in all of mine.

Q. Can you name, Mr. James, these gentlemen to whom you have referred to as desiring to perpetuate unity of ownership?

A. I will try to, sir,—those I have in my mind. Mr. Kennedy, Mr. Samuel Thorne, Mr. Hill, Lord Strathcona, and Lord Mount Stephen, and probably Mr. Tuck.

Q. Mr. Baker?

A. Well, I hadn't Mr. Baker in my mind, because he was a much more recent owner in the Great Northern, and I was never so much associated with him. I hadn't him in mind.

1798 The gentlemen I have named were those I had in my mind more, and I can't recall any others that I had in my mind.

Q. Mr. Baker and Mr. Cannon had both acted with you gentlemen after they had acquired their stock in the Great Northern?

A. Mr. Baker has, I have always understood, always sent his proxy to Mr. Hill, but he never spoke to me on the subject at all.

Q. Mr. Cannon the same? 1799

A. I presume so. He never spoke to me about the matter at all. I never had any conversation with Mr. Cannon on the subject.

Q. You turned in also all of your Northern Pacific, of course?

A. Yes, sir.

Q. Was there any talk among you gentlemen, including Mr. Hill, as to who was to be president of the Northern Securities Company, before you turned your stock in?

A. I think I had one conversation with Mr. Hill, in which 1800
he suggested that Mr. Kennedy would be desirable for the presidency of that company, but I can't recall anything else at all but that one conversation.

Q. Did you have any conversation with Mr. Hill or anyone else as to who should be chairman of the executive committee?

A. I did not.

Q. You say that you believed that it would be for the interests of the Great Northern territory to have your holdings in the Great Northern Railway Company united all the time. Did you believe that when you and Mr. Morgan and his associ- 1801
ates had acquired a majority of the Northern Pacific common stock, that it would be for the interests of that country to have that united also in this Northern Securities Company?

A. I did.

Q. And that was one of the reasons why you gentlemen turned your holdings over to the Northern Securities Company, to secure that unity of interest, was it not?

A. I won't say that, sir, no.

Q. I mean, speaking for yourself.

A. I have always believed that the interests of the country
were greatly to be promoted by the continuance of the policy 1802
that Mr. Hill had been developing through these years, and that it was not only for that country, but for the whole of the United States,—and I believe so still.

Q. And you believed also that it was for the interests of that country to get the Northern Pacific holdings into this Northern Securities Company so that that same policy could be carried out as to both those properties, did you not?

1803 A. I had no such thought at the time as that.

Q. Well, you gentlemen turned your Northern Pacific holdings over to the same company that you turned your Great Northern over to. Now, was not that for the purpose of getting your holdings together in one company?

A. It was to get them in one company, but it didn't change the control of the policy of the Northern Pacific a particle.

Q. Well, it placed the control of the Northern Pacific admittedly in the Northern Securities Company?

A. Yes.

1804 Q. And you believed it would be for the best interests of those properties as well as of the country, that those holdings should be united in the Northern Securities Company?

A. I believed it was for the best interests of that country, the development of the great trade, that the policy Mr. Hill had been pursuing should be continued in that country.

Q. And you believed in turning your holdings in to the Northern Securities Company that such would be the case, that that policy would be continued?

A. I believed it would be doing more for that country than anything else I could possibly do.

1805 Q. You believed when you turned your holdings, both Northern Pacific and Great Northern, over to the Northern Securities Company, that the policy Mr. Hill had been carrying out for years would be carried out through the Northern Securities Company?

A. Well, I believed he would continue the policy that the Great Northern had pursued before, even when it was the St. Paul, Minneapolis & Manitoba road.

Q. And you believed that would be done by and through the Northern Securities Company, of course?

A. Yes, sir.

1806 Q. Now, Mr. James, being desirous of having that policy carried out, as you have stated, I suppose you talked it over with those other gentlemen who were holders like yourself of Great Northern and Northern Pacific stock, before you turned your stock over to the Northern Securities Company, didn't you?

A. No, sir, not that I can recall.

Q. You don't recall that you did that?

1807

A. I can't recall that I did that.

Q. You had in mind a definite idea of having that policy carried out?

A. Yes, sir.

Q. And you wanted it done?

A. I believed it was for the best interests of the country that that should be done.

Q. Yes, I understand that. Now, that being the case, did you not have some talk with these other gentlemen as to the accomplishment of your desires by——

A. I have no recollection of that.

1808

Q. —of the accomplishment of your desires in that regard by turning your holdings and their holdings over to the Northern Securities Company?

A. I have no recollection of any conversation about it, sir.

Q. Did you talk with Mr. Clough about it?

A. No, sir.

Q. Did you talk with Mr. Hill about it?

A. I can't recall that I did, no, sir.

Q. Mr. James, did you have any conversation with Mr. Hill in which you told him, prior to the time you turned in your stock, why you desired that his policy should be perpetuated in that property, and that you would not turn your stock in to the Northern Securities Company unless such was the case?

1809

A. You ask me if I had conversations about the policy throughout the country. Of course, Mr. Hill knows perfectly well that I would not turn my stock in if I felt it was going to be used against him and against the policy that I approved of.

Q. Yes. You told him that, did you?

A. I have no recollection of telling him that, sir.

Q. You assumed that was so well known that it would not be questioned?

1810

A. Perhaps I did. I hope it is well known, sir.

Q. And that is equally true of these other gentlemen who were associates of yourself and Mr. Hill in Great Northern holdings?

A. I cannot speak for them, sir.

Q. You believed that, didn't you?

A. I believed it fully, but I can't speak for them.

1811

CROSS-EXAMINATION.

By Mr. Young:

Q. Then, I understand that when you transferred your stock to the Northern Securities Company you didn't exact from Mr. Hill any promise that he would in the future refrain from doing just the opposite of what he had done previously?

A. I did not.

Q. Now, when you speak of the policy of Mr. Hill which you approve of, do you refer to his policy in regard to building
1812 up a trade with the Pacific coast and with China and Japan, as to which he testified?

A. I do, sir.

Q. And to the purchase of the Burlington road as a means of building up and carrying on that trade?

A. I do.

Q. And those are the main features of that policy, are they?

A. Those are the main features of that policy.

Q. You have been questioned as to the fact of your transferring your stock to the Northern Securities Company, without any voice in fixing the rate at which it was transferred.
1813 That rate was fixed before you made the transfer, was it not?

A. Yes, sir.

Q. And you could judge for yourself whether you were satisfied with it?

A. I was satisfied with it.

Q. At the beginning of your testimony you were questioned as to a block of stock held by yourself and others. Am I to understand that you and these other genetlemen, Mr. Hill and Mr. Kennedy and others, held your Great Northern stock in common in one block, or that they were individual holders?
1814 A. Absolutely individual holders.

Q. And so continued always?

A. And so continued; could be sold out any day.

Q. Now, about giving your proxies, that is during the years that you continuously gave them to Mr. Hill. Was that the result of any joint action, or did each man act for himself?

A. Each man acted for himself.

Q. Just the same as other individual stockholders did?

A. Exactly.

Q. And were those proxies in usual form, revocable at any 1815
time?

A. Yes, sir.

Q. Of course they would be under the law, anyhow. And to a very great extent all the stockholders of the Great Northern were in the habit of sending their proxies to Mr. Hill?

A. So I believe, sir.

Q. And do you know of any occasion, in any of the meetings of the Great Northern Railway Company, when the sustaining of Mr. Hill's plans depended upon the votes of yourself and associates?

1816

A. No, sir.

Q. As against any opposition to them?

A. No, sir.

Q. So that when it is said that you gentlemen acted together in sending proxies or at the meetings, you simply acted together in practically the same way that all the stockholders acted together in sustaining and upholding the hands of Mr. Hill in the management of that road?

A. That is so, sir.

Q. Now, in reference to this supposed agreement or understanding among you gentlemen that you would transfer your 1817
shares to the Northern Securities Company, which counsel has endeavored to make you admit, but which you have not admitted, was not the fact like this: you gentlemen were aware of each other's views in regard to the propriety of forming a holding company?

A. Yes, sir.

Q. And, without any agreement or understanding on the subject, each of you, or, rather you, speaking for yourself, supposed (and presumably each of the others supposed) that the other gentlemen would be likely to act in accordance with the views which you knew they entertained on that subject? 1818

A. Yes, sir.

Q. And was there anything more than that, and the expectation based on that, which had to do with your turning over your shares?

A. No, sir; I think not.

1819

RE-DIRECT EXAMINATION.

Q. You say that the holdings of these gentlemen you have referred to was individual in the Great Northern Railway Company and could be sold out at any time by any one of them?

A. Yes, sir.

Q. And it was to put this stock in a position where it could not be sold out that you desired to get it in a holding company?

1820 A. No, sir.

Q. Why, then, did you desire to unite the holdings?

A. We could sell out from a holding company just the same as we could from——

Q. You could sell your holdings in the holding company, but you couldn't scatter the holdings of the Great Northern; that would remain in the holding company all the time?

A. Yes, sir. The holding company could sell out.

Q. But your desire was all this time, when you were talking about a holding company, to get the holding that you gentlemen had in the Great Northern Railway Company into one

1821 fixed place, was it not?

A. To some extent it was, yes.

Q. And that is what you sought to accomplish, of course?

A. Yes.

Q. Now, Mr. Hill, you say, had always carried out a policy on the Great Northern Railway Company which he had adopted himself and met with the approval of you gentlemen?

A. I don't know that it is correct to say that he had adopted it himself.

Q. Well, you approved the policy which was adopted and which he carried out?

1822 A. I did.

Q. And he very largely adopted that policy?

A. I was on the board of directors of the Manitoba road (the St. Paul, Minneapolis & Manitoba) which was the predecessor of the Great Northern, for many years, and all that matter of policy was discussed at that time very fully. So that I can't answer your question that it was largely adopted by himself.

Q. So that during recent years Mr. Hill has had a fixed 1823
policy?

A. Yes.

Q. Which he has carried out regarding the property of the Great Northern Railway Company?

A. Yes, sir.

Q. And you gentlemen have approved of it?

A. Approved of it, yes, sir; that is correct.

Q. Now, did you have any discussion, during the summer of 1901, with Mr. Clough or Mr. Hill or any other person engaged in perfecting the plan of this holding company, about a 1824
St. Peter Company in Minnesota?

A. I remember in one interview with Mr. Hill, just after I got back from the West, that he spoke about there being some company of that name, some charter of that name, that possibly might be utilized, but with that exception I never heard anything.

Q. What time was that talk?

A. It was either the end of April or early in May. I couldn't fix the date closer than that, sir. It was just after I returned from California.

Q. Then he stated to you at that time that there was a 1825
charter in the name of a St. Peter Company in Minnesota——

A. Yes, sir.

Q. —which he thought might be utilized?

A. Yes, sir.

Q. Did he go into the details of that at all?

A. No, sir.

Q. Did you have any further talk with him or with anyone else regarding that charter after that?

A. No, sir.

Q. Did you have any talk at any time in regard to you and 1826
Mr. Hill and Mr. Kennedy and these other gentlemen who had formed this coterie of stockholders of the Great Northern Railway Company, putting your holdings in the Great Northern Company in with some trust company?

A. That had been suggested, yes, sir.

Q. That was with the idea, I suppose, of putting that stock where it would remain permanent, in one place, and could not be scattered?

1827 A. In case of death, yes.

Q. In other words, you desired to get that stock in a position or place where it would be held, so that it could not be scattered by a sale, and that was what you had in mind all the time?

A. That is what we had talked of, yes. We had not decided on a trust company or anything, but we had talked for many years of the desirability of something of that kind.

Q. And that is one of the things you believed you were accomplishing in turning it over to the Northern Securities
1828 Company?

A. Yes, sir.

By Mr. Young:

Q. Did you think that by transferring the shares to the Northern Securities Company you were putting it out of the power of the Northern Securities Company to dispose of those shares?

A. No, sir.

D. WILLIS JAMES.

Subscribed and sworn to before me this 25th day of Novem-
1829 ber, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

The further taking of testimony in this case was thereupon, by consent of all parties, adjourned to the City of St. Paul, Minnesota, on the 5th day of December, 1902, at 11 o'clock in the forenoon, in the court room of the United States District Court in the Federal Building.

1830

(From U. S. vs. No. Sec. Co., Vol. 1, p. 241.)

GEORGE W. PERKINS, after being first duly sworn, testified as follows in answer to questions by Mr. Lancaster:

Mr. Kellogg. The defendant objects to any testimony and to each and every question and answer on the ground that it is incompetent, irrelevant, and immaterial, and that the bill

in equity states no ground of equitable relief and no cause of 1831
action against the defendant company. Further, that no relief can be had in this case affecting the interests of the Northern Securities Company or any of the stockholders of the Northern Pacific Railway Company without said company and said stockholders each being made parties to the bill.

It is stipulated that this objection may be considered as made to each and every question without renewing the same as the questions are asked, and it is also stipulated that this may apply to each witness without repeating the objection.

Q. J. P. Morgan & Co. is a copartnership, I believe? 1832

A. It is; it is a private banking house.

Q. Are you a member of the firm of J. P. Morgan & Co.?

A. Yes, sir; I am.

Q. How long have you been a member?

A. About one year.

Q. And you were a member during the summer and—spring and summer of 1901?

A. Yes, sir; the late spring and summer.

Q. Had you been connected with that firm prior to the time you were admitted as a partner? 1833

A. No, sir.

Q. Never had any connection with it prior to that time?

A. No, sir.

Q. I understand you were never connected before that time?

A. In no way whatsoever.

Q. Can you give us the date when you were admitted into the firm?

A. I cannot, but about March of last year.

Q. March of 1901?

A. Yes, sir. 1834

Q. Mr. Perkins, between May 1 and May 9, 1901, did your firm purchase a large number of shares of the Northern Pacific common stock?

A. I believe they purchased more or less. The question of a large amount is relative.

Q. How much Northern Pacific common stock did the firm of J. P. Morgan & Co. purchase during that period between May 1 and May 9?

1835 A. I do not know.

Q. Can you give us the amount so purchased, approximately?

A. No, I cannot. I went into the firm in March, as I have stated. During that time—in April and May—I was getting in touch with the general business of the firm, and went abroad about the 1st of July, so that the immediate daily routine of the firm's business was scarcely in my hands at the times you speak of.

Q. At that time—from May 1 to May 9—was Mr. Morgan
1836 abroad?

A. Yes, sir.

Q. And when did he return?

A. Early in July.

Q. And what time did he go abroad?

A. I think—I am not certain as to this—I think early in April.

Q. Did Mr. Morgan purchase some of the Northern Pacific common stock while he was abroad; that is, purchase it in the market?

A. Not to my knowledge.

1837 Q. You never knew or learned from your partners that such transactions were taking place?

A. No, sir; I did not.

Q. How many shares of the Northern Pacific common stock did the firm of J. P. Morgan & Co. hold on May 1, 1901?

A. I don't know.

Q. Do you know approximately?

A. I do not; no, sir.

Q. Will the books of J. P. Morgan & Co. show exactly how much stock they owned on May 1, 1901?

A. I could not say whether they would or not, but you may
1838 get to that later on. That is, some other questions.

Q. Will you give the names of the gentlemen constituting the firm of J. P. Morgan & Co.—who constitute it now and who constituted it on May 1, 1901?

A. There has been no change during that time. I could not give all of the firm.

Mr. Stetson. I can.

Mr. Lancaster. I think we had better have that if you will give it to us.

Mr. Stetson. I will write it out. You go on, and I will fill 1839
this in.

Q. Who was in general charge of the firm's business during Mr. Morgan's absence?

A. Mr. Robert Bacon.

Q. And who else next to him?

A. Charles Steele.

Q. Mr. Bacon is now abroad, is he not?

A. Yes, sir.

Q. And has been for some time?

A. Since the last fall.

Q. So that Mr. Bacon, as I understand it, was in general 1840
charge of the firm's business, and next to him Mr. Steele?

A. Mr. Steele; yes, sir.

Q. Did Mr. Bacon have special charge of the Northern Pacific transactions, Mr. Perkins?

A. So far as they related to our firm's business, do you mean?

Q. Yes.

A. Yes, sir.

Q. Did Mr. Steele have anything to do with those transactions, Northern Pacific transactions, at that time? 1841

A. I don't know, as I said, what you mean by Northern Pacific transactions.

Q. The purchase or sale of Northern Pacific stock, purchased for the firm or sold on behalf of the firm?

A. I think not.

Q. You think Mr. Steele had nothing to do with it?

A. I think nothing; if he had it was very, very little.

Q. Mr. Perkins, have you any doubt but that the books of your company would show the amount of Northern Pacific interest held by your firm on May 1, 1901?

A. They probably would. 1842

Q. And your books, would they show the purchase between May 1 and May 9, on account of your firm?

A. I cannot say as to that.

Q. Well, in the ordinary course of business whatever is purchased for the firm, or by the firm, for its own account, or sold by the firm on its own account, would necessarily appear on your books?

1843 A. I should think so.

Q. I am merely getting at it, Mr. Perkins.

A. Yes; I appreciate it. I was a very new member of the firm, and a great part of that I don't know. I am not definite about that, not being there at the time.

Q. Were you present at any conference held between your firm or any of the members of your firm and Mr. Harriman, Mr. Schiff, Mr. Hill, and a number of others immediately after May 9, a few days after May 9, 1901?

A. No, sir; I was not.

1844 Q. Did the firm of J. P. Morgan & Co. purchase or agree to purchase Northern Pacific common stock of Mr. Harriman, or of Mr. Schiff, or the Union Pacific Railway Company, or of the Oregon Short Line Railway Company subsequent to May 9, and, say, prior to November 1?

A. No; not to my knowledge.

Q. As a matter of fact, did the firm of J. P. Morgan & Co. purchase on its own account, or for its own account, or on account of others, Northern Pacific common stock of either Mr. Schiff, Mr. Harriman, or the Union Pacific, or the Oregon Short Line subsequent to May 9, 1901?

1845 A. You have asked to cover up to November 1. What do you mean now? I do not get the difference between the two questions.

Q. I say up to November 1?

A. I have answered that, that they did not.

Q. Subsequent to November 1, 1901, did your firm, or any of the members of the firm, for your own account and for the account of other parties, purchase of either Mr. Harriman or Mr. Schiff, or the Union Pacific, or the Oregon Short Line, Northern Pacific common stock?

A. Yes, sir; we did.

1846 Q. And how much?

A. Between $75,000,000 and $78,000,000 to $80,000,000; somewhere along there; I don't remember the exact amount.

Q. Common stock, you mean?

A. Yes, sir; I say common. I mean common and preferred.

Q. Your firm purchased from whom?

A. Well, we purchased from, I think, what was commonly known as the Union Pacific interests—Mr. Harriman and Mr.

Pierce. I think the stock was in the name of Harriman and 1847
Pierce. I am not sure as to that.

Q. And did that purchase which you speak of, which included both common and preferred, amount to about $78,000,000?

A. I think so, between $75,000,000 and $80,000,000.

Q. Did that purchase include, as you understood it at the time and understand it now, all the stock, common and preferred, held by the Union Pacific interests?

A. Yes, sir.

Q. And by the Union and Pacific interests you would in- 1848
clude Mr. Harriman, Mr. Schiff, and the Oregon Short Line?

A. I don't know that I am bound to testify as to that, but in my own mind I would say, yes, sir.

Q. Well, when you use the term Union Pacific interests in that connection I understand you to mean, Mr. Perkins, both the Union Pacific, a corporation, the Oregon Short Line, and Mr. Harriman and Mr. Schiff?

A. As I understand it; yes, sir.

Q. What was the date of that purchase of the entire holdings, both common and preferred, in the Northern Pacific road, from what you term the Union Pacific interests? 1849

A. I cannot give you the date, but it was subsequent to the organization of the Northern Securities Company.

Mr. Lancaster. The Northern Securities Company was organized, I think, November 13, was it not, Mr. Stetson?

Mr. Kellogg. I think that was the date; the articles were filed on that date.

Q. Mr. Perkins, had the firm of J. P. Morgan & Co. any agreement or understanding with either Mr. Harriman, Mr. Schiff, or the officers of the Union Pacific, or of the Oregon Short Line, for that purchase prior to the formation of the Northern Securities Company? 1850

A. Not to my knowledge. I believe not.

Q. Had you any personal knowledge of the negotiations which led up to the actual purchase which you have described?

A. Yes, sir.

Q. You were selected by members of your firm?

A. I conducted those negotiations.

1851 Q. Now, when did they commence?

A. I cannot give you the date, but after the Northern Securities Company was organized and in existence.

Q. And no negotiations, to your knowledge, were had by your firm with either Mr. Harriman or Mr. Schiff, or any of the officers of the Union Pacific or the Oregon Short Line prior to the actual formation and incorporation of the Northern Securities Company?

A. Not to my knowledge; no, sir.

Q. Were the stocks of the Union Pacific interests, amount-
1852 ing, as you say, to between $75,000,000 and $80,000,000 of both common and preferred stock; were those stocks bought for cash?

A. Partly.

Q. How much?

A. I do not recollect. I should say something like $10,000,000 cash.

Q. And the balance, how were they to be paid for?

A. In stock of the Northern Securities Company, if we could get it for them.

Q. All of the preferred stock held by the Union Pacific in-
1853 terests were subsequently retired?

A. Yes, sir.

Q. And was that stock which you purchased from the Union Pacific interests, the preferred stock, was that to be paid for, or any portion of it, by the stock of the Northern Securities Company?

A. It is difficult to answer that. There were three separate transactions going on about this time.

Q. What do you mean; with the Union Pacific interests?

A. Well, in a general way, not specially with the Union Pacific interests. Perhaps I should have said two transac-
1854 tions. There was the retirement of the preferred stock of the Northern Pacific and the question of the organization of the Northern Securities Company. Our business was with the retirement of the preferred stock of the Northern Pacific.

Q. Now, do you remember the number of shares of the common stock which was turned over by the Union Pacific interests to your firm?

A. No; it was less than one-half.

Q. About $37,000,000? 1855

A. I think so; something like that.

Q. And the balance of the common stock, amounting to about $41,000,000, was held by your firm, Mr. Hill and Mr. Hill's associates?

A. Something over $41,000,000.

Mr. Stetson. What do you mean by the term associates? You had it out with Mr. Kennedy yesterday, but you have not had it with Mr. Perkins yet.

Q. No. Mr. Perkins, you answered the question that it was held by yourself and Mr. Hill and his associates. Whom did you understand in answering that question his associates 1856 to be? That is merely to explain your answer?

A. Mr. Hill and Mr. George F. Baker, D. Willis James, John S. Kennedy, and several other gentlemen. I do not recollect who they all were.

Q. Lord Strathcona?

A. Yes, an English gentleman.

Q. And Lord Mount Stephen?

A. Yes, sir; I believe their names were also in the list.

Mr. Kellogg. You did not want to say that they held the whole 41,000,000? 1857

A. No, I did not understand that.

Mr. Boutelle. That is leading the witness a little, Mr. Kellogg.

Mr. Kellogg. I should not think you gentlemen would raise that question.

Q. You understood, Mr. Perkins, at the time of the purchase from the Union Pacific interests that a clear majority of the Northern Pacific common was held by your firm, Mr. Hill and his associates?

A. Well, it hardly seems to me that the word associates is the proper word. People that we knew and were friendly 1858 with, and that sort of thing.

Q. Use it in that sense then.

A. Yes, sir.

Q. Now, the common stock that was turned over by the Union Pacific interests was entitled under the retirement scheme to its proportionate share of the new common stock to be issued?

1859 A. Yes.

Q. And that new common stock was issued to those interests; that is representing those interests?

A. Yes.

Q. You bought the Union Pacific interests, both common and preferred?

A. Yes.

Q. And you handled the common stock so purchased from the Union Pacific interests as you would any other purchase in your own interests? You used that stock and took your
1860 proportionate share of the new issue of common stock?

A. I do not understand that question.

Q. You took the common stock that you purchased from the Union Pacific interests and used it as a basis for subscriptions to the certificates of indebtedness issued by the Northern Pacific Company, didn't you?

A. I do not understand that. I am very stupid, but I do not see it.

Q. Mr. Perkins, you purchased the common and preferred stock of the Union Pacific interests, amounting to between $75,000,000 and $80,000,000, shortly after the organization of
1861 the Northern Securities Company?

A. Yes, sir.

Q. Now what did you ultimately do with all of that stock?

A. We sold it to the Northern Securities Company.

Q. And when?

A. I should say two or three weeks after the company was organized.

Q. And for what?

A. For their stock and for money.

Q. How much money did the Northern Securities Company pay?

1862 A. My recollection is something like $8,000,000 or $10,000,000.

Q. You paid on this purchase from the Union Pacific interests how much cash to the Union Pacific interests? You have already stated that?

A. Yes, sir; I have.

Q. About how much?

A. Something approximating $10,000,000; I do not recollect exactly. 1863

Q. Did you pay to the Union Pacific interests in cash just the amount that you received in cash from the Northern Securities Company on the sale?

A. It is my recollection we did.

Q. In other words, in conducting that sale or purchase from the Union Pacific interests you took the stock into your own hands, and then turned it over to the Northern Securities Company on precisely the same terms that you purchased from the Union Pacific interests?

A. Yes, sir. 1864

Q. Paying to the Union Pacific interests in cash the same amount that the Northern Securities Company paid to you when you turned the stock into them afterwards?

A. Yes, sir; that is my recollection.

Q. Mr. Perkins, did your firm in conducting that purchase from the Union Pacific interests act for yourself as principals or as brokers?

A. We acted for ourselves as bankers. I don't know as you can say as brokers.

Q. Did you purchase that stock upon your own account or did you purchase it as a broker, with a previous agreement with the Northern Securities Company as to what should be done with it? 1865

A. We had no previous agreement with anyone save the Union Pacific people, who wanted us to make this transaction, which we finally completed for them. They were desirous of securing the Northern Securities stock.

Q. And at the time of the purchase from the Union Pacific interests it was understood that you were to turn this stock over to the Northern Securities Company, and the stocks and cash of the Northern Securities Company was to be turned over to you and by you to the Union Pacific interests? 1866

A. If we could get it. If we could make the transaction.

Q. The Northern Securities Company was in existence and had a board of directors at the time you purchased this stock of the Northern Pacific, both common and preferred, was it not?

A. Yes, sir.

1867 Q. And had you any arrangement or agreement with the Northern Securities Company with reference to this large purchase from the Union Pacific at the time you made that purchase?

A. We had not, and we almost failed to make the exchange.

Q. So that at the time you made the purchase from the Union Pacific interests, Mr. Perkins, you had no contract or agreement or understanding as to the disposition of that stock to the Northern Securities Company?

A. No, sir; not to my knowledge.

1868 Q. And all negotiations with reference to the subsequent disposition of that stock—common and preferred—to the Northern Securities Company were had after the conclusion of the deal with the Union Pacific interests?

A. We did not close any deal with the Union Pacific interests.

Q. Well, at the time you purchased from the Union Pacific interests did you pay part cash?

A. No, sir.

Q. Did you pay any cash at the time you made the deal with them?

1869 A. We undertook to get them a certain amount of stock from the Northern Securities Company—a certain sum of money in exchange for their holdings.

Q. Was this stock absolutely transferred by the Harriman or Union Pacific interests to your firm, or simply transferred to you for the purpose of making a disposition of it to the Northern Securities Company?

A. I do not know what the transfer books will show.

Q. Well, what was the fact?

A. I do not know. That would simply be a matter of clerical work.

1870 Q. What was your understanding or arrangement in case you had failed to make a deal with the Northern Securities Company for the turning in of all this stock to it; would you have had it on your hands—78,000,000 or 80,000,000 of preferred stock?

A. No, sir; the Union Pacific would have had it.

Q. So that in that transaction throughout your firm was acting as a broker for the disposition of that stock or for the

turning of that stock in or for the sale of that stock to the 1871
Northern Securities Company, was it not?

A. I don't know that the word "broker" is the proper word. I don't know what you would call it. We were negotiating for the Union Pacific for this transaction, a very common position for us to be in.

Q. I have no doubt of it. I understand that, Mr. Perkins, but you were negotiating a sale of that stock for the Harriman or Union Pacific interests.

A. For something else, if we could get that something else delivered.

Q. And if you had failed to make that sale to the Northern 1872
Securities Company you would not have had that stock on hand, but it would have belonged to the Union Pacific interests?

A. I suppose we might have, or take something else for it.

Q. It would have to be a new trade?

A. Further negotiations; yes, sir.

Q. Did your firm, as a matter of fact, agree absolutely to take this stock from the Union Pacific interests and obligate yourselves for the purchase price, regardless of further negotiations with the Northern Securities Company? 1873

A. Hardly, I should think.

Q. Now, in November, 1901, how much Northern Pacific common did your firm hold or own on its own rights?

A. I don't know.

Q. Do you know approximately?

A. I do not.

Q. Did your firm during November or December, 1901, sell some $8,000,000 or $10,000,000 or $12,000,000 of Northern Pacific common to Mr. J. J. Hill?

A. I don't know.

Q. If there was any such transaction, you had no personal 1874
knowledge of it?

A. No, sir.

Q. Had you anything to do in the conferences or negotiations that were had between leading stockholders of the Great Northern and the Northern Pacific with reference to the organization of the Northern Securities Company?

A. No, sir.

1875 Q. Did your firm, in the summer and fall of 1901, hold stock in the Great Northern Railway Company?

A. I don't know whether we did or not. The Great Northern?

Q. Yes. Did your firm turn in any of the common stock of the Northern Pacific into the Northern Securities Company and take the stock of the Northern Securities Company in payment therefor?

A. I don't know. That was not a part of my business.

Q. Does your firm hold or own any of the Northern Securi-
1866 ties Company stock?

A. Yes, sir.

Q. And when did they acquire it?

A. I don't know. After the company was organized, I suppose, in November or December. I don't know as to that.

Q. Did they purchase it for cash, or did they exchange Northern Pacific or Great Northern stock for it?

A. I don't know.

Q. Does your firm own any of the stock of the Great Northern Railway Company now?

A. I don't know whether we do or not.

1877 Q. Well, do they own any of the stock of the Northern Pacific Railroad Company?

A. All these are details of bookkeeping and schedules. It is very difficult to carry in one's mind.

Q. Now, whatever stock the firm of J. P. Morgan & Co. hold in the Northern Securities Company, did they acquire it immediately upon the organization of that company, or within a few weeks thereafter?

A. I cannot say; no, sir.

Q. Mr. Perkins, I understood you to say that you did not know whether your firm held any Great Northern Railway
1878 Company stock at the present time?

A. That is what I said, sir.

Q. You understood me to mean by that to own the stock absolutely?

A. Exactly.

Q. Do you know whether your firm hold a large amount of the Great Northern stock as collateral securities for loans?

A. It is impossible to tell.

1879

Q. You don't know?

A. No, sir.

Q. Does your firm hold any of the Great Northern stock at the present time, or since January 1 has it held any as trustee for the Northern Securities Company?

A. I don't know. That would come under the same general list, of course.

Q. You don't know whether it has or has not?

A. No, sir.

Q. You are a director of the Northern Securities Company, Mr. Perkins?

1880

A. Yes, sir.

Q. And you were elected a director, when?

A. When the company was organized.

Q. And that was on or about or prior to November 13?

A. About that time. The middle of November, I should say.

Q. Have you attended the meetings of the board of directors since that time?

A. When I have been in the city.

Q. Are you a member of the executive committee?

A. No, sir.

1881

Q. Do you remember the names of the executive committee?

A. I don't think I could name them all now.

Q. Has there been a meeting of the board of directors which you have attended within the last four weeks?

A. No, sir.

Q. When was the last meeting which you attended?

A. I do not recollect. It was a number of weeks ago.

Q. Six weeks?

A. Yes; I should say more than that.

1882

Q. Probably eight weeks ago, Mr. Perkins?

A. I should think as long ago as that; yes.

Q. You are also a member of the board of directors of the Chicago, Burlington and Quincy Railway Company?

A. Yes, sir.

Q. And you were elected immediately after the organization of that company last summer or fall?

A. I believe so.

1883 Q. Mr. Perkins, you say that you do not yourself know the amount of stock or number of shares in either the Great Northern or Northern Pacific or Northern Securities Company that your firm hold now or held during the summer and fall or early winter of 1901?

A. Yes, sir.

Q. Who of your firm does know the number of shares in each of those companies?

A. I am sure I do not know. I am sure I do not know who would know that. It is rather a large organization.

1884 Q. Mr. Perkins, is it true that you would be unable yourself to ascertain the number of shares of stock owned by the firm of J. P. Morgan & Co. at the present time in these different companies which I have mentioned?

A. I would not know until I tried as to that.

Q. Is Mr. Steele more familiar with those matters than yourself?

A. I don't know that he would be on the point that you name. The way you put it, it does not occur to me that that information would be wanted by anyone in that shape.

1885 Q. Mr. Perkins, do you now know that your firm purchased some 16,000,000 or 18,0000,000 of the Northern Pacific Company stock between May 1 and May 9, 1901?

A. No, sir.

Q. You neither knew of that fact at the time nor have you learned of it since. Is that right?

A. I don't know if it was a fact then or now; yes.

Q. You don't know, then, of your own knowledge whether your firm purchased any stock either for its own account or for others; that is, stock in the Northern Pacific Railway Company, during that period?

1886 A. Well, I know in a general way that we purchased Northern Pacific stock. I was only just in the firm and went away immediately after that, you see, and was not in active management of any part of the business at any time you refer to.

Mr. Stetson. I think on this particular question you had better ask Mr. Steele.

The Witness. Yes; he was here then.

Q. Mr. Perkins, whenever any stock is bought on account of the firm of J. P. Morgan & Co. for its own account, in the

ordinary course of business, there would be an entry made of 1887
that fact on your books, wouldn't there?

Mr. Stetson. I keep warning you, Mr. Lancaster, that Mr. Perkins don't know any more about it than you do, or I do. If you wait until Mr. Steele comes, he will tell you.

A. It pertains to the bookkeeping department, you see. It is a pretty big organization.

Q. Will you look over that list, so we can have that put into the record as the members of the firm of J. P. Morgan & Co.?

A. I believe that is correct. I would not want to swear 1888
that is all the members of the firm, but all those are members.

Q. And those members of the firm against whose names is written Philadelphia are residents of Philadelphia, are they?

A. I believe they are. I have heard they were.

Q. And that list may be taken as a correct list of the members of the firm?

A. I said to the examiner that these gentlemen are all members of the firm, but whether it is all the members of the firm or not, I don't know.

CROSS-EXAMINATION. 1889

By Mr. Stetson:

Q. Did any plan or proposition, of which you have any knowledge for the retirement of the preferred stock have any relation to or any connection with any agreement, or any statements with, by, or to Mr. Hill?

A. Absolutely none.

Q. I ask you the same with reference to Mr. Schiff.

A. I make the same answer.

Q. The same with reference to Mr. Harriman.

1890

A. The same answer.

Q. The same question with reference to the formation of the Northern Securities Company.

A. The same answer.

Q. The retirement of the preferred stock, to your knowledge, was wholly independent of these persons and this corporation, and any connection therewith?

A. Absolutely.

1891 Q. When was there first brought to your attention the adoption or the formation of any company, whether called the Northern Securities Company or any other name, to hold the stock of the Northern Pacific or the Great Northern Railway Company?

A. The idea of a holding company to hold the stock of the Northern Pacific Company was brought to my attention after my return from Europe in the autumn of 1901.

Q. You have stated that the so-called Harriman stock, purchased by J. P. Morgan & Co., as bankers, was sold to the
1892 Northern Securities Company after that company was organized. Can you be any more specific in your statement of the date?

A. My recollection is that the terms of sale were finally agreed upon upon or about Monday, November 18, 1901.

Q. You have stated that you had not completed any arrangement or agreement with the Northern Securities Company with reference to this large purchase from the Union Pacific Company at the time you made the purchase, and you further stated that you had almost failed to make the exchange. What do you mean by that?

1893 A. I mean that there was quite a hitch which arose from the fact that in our talk with Mr. Harriman and his friends we had assumed that their holdings of preferred and common stock were somewhat larger than they actually proved to be, and we had negotiated with the Northern Securities Company upon that basis. When they came to deliver the stock, which was the first time that we knew accurately just how many shares of stock they held, it turned out that they did not have so much as we had supposed in the negotiations and had represented to the Northern Securities Company that we could deliver. Of course, the Northern Securities Company refused
1894 to take that amount of stock on the same basis that they had agreed upon for the amount which they had supposed was to be delivered. We succeeded in effecting a compromise, under which the Northern Securities Company accepted the amount of stock which Mr. Harriman and his friends were able to deliver. Afterwards a substantial reduction of the price was made, owing to the fact that the amount was not as great as the Northern Securities Company had supposed it would be. This was upon or about Monday, November 18, 1901.

Q. I understand, then, Mr. Perkins, that you did not know, 1895
until after the Northern Securities Company was organized, how much Northern Pacific common Mr. Harriman and his friends held?

A. That is right.

Q. I understand you, Mr. Perkins, that when the Northern Securities Company was organized the so-called Harriman stock had not been purchased by you or by anyone for that company?

A. That is right.

Q. And, as far as you know, no arrangement for its sale to 1896
the Northern Securities Company had ever been made?

A. No, sir; there had been some negotiations, but there had been no final agreement.

Q. Well, as far as you know, was there any connection between the organization of the Northern Securities Company and the acquisition of the Harriman stock?

A. None whatever.

Q. Was the fact of the acquisition of a majority of the stock of both or of either the Northern Pacific or the Great Northern Railway Company made a condition of the organization of the Northern Securities Company, as far as you know? 1897

A. Not to my knowledge, sir.

Q. Was there any agreement between J. P. Morgan & Co. or J. P. Morgan and his associates, and Mr. Hill and his associates, to organize the Northern Securities Company and to transfer to it the ownership of a majority of the Northern Pacific and Great Northern Railway Company stock?

A. Not to my knowledge.

Q. Was there any agreement of any such character?

A. Not to my knowledge.

Q. So far as you know, or as was known to your firm, so far 1898
as you know, in the organization of the Northern Securities Company, or in the transfer thereto of the stock of the Northern Pacific Railway Company, or of the Great Northern Railway Company, was there any purpose or intent to suppress competition, or in any way to control competition, or to restrain trade or commerce between the States, or within the States, or within any State?

1899

(From U. S. vs. No. Sec. Co., Vol. 1, pp. 276-311.)

CHARLES STEELE, being first duly sworn, testified as follows to questions asked by Mr. Boutelle:

Q. Mr. Steele, you are a member of the firm of J. P. Morgan & Co., of this city?

A. I am.

Q. And how long have you been a member of that firm?

A. Since early in 1900.

1900 Q. Were you in this city during the first six months of 1901?

A. I was.

Q. We have got somebody that was here, finally.

A. I think I was here most of it.

Q. Did you have any part in representing your firm in the transaction connected with the purchase of the Burlington road by the Great Northern and Northern Pacific?

A. I had some little to do with it; yes.

Q. And when did your connection with that begin—at what time?

1901 A. I could not give you the exact date; it was, I think, in the early winter. The first connection I had with it was an interview with the committee in Boston who represented the Burlington road; that was along in the early winter.

Q. In the early winter?

A. Yes; in the early part of the year 1901.

Q. Now, did you represent your firm in the further negotiations that were had in respect to the purchase of the Burlington; did you act for your firm in that matter?

A. No; I did not act directly.

Q. Who did act for your firm in that transaction?

1902 A. Mr. Bacon was the principal actor.

Q. Mr. Bacon, I believe, is in Europe now?

A. He is, unfortunately. I should say, Mr. Boutelle, I was with Mr. Bacon almost every day, and I could give you the results.

Q. Well, were you cognizant of the details of the transaction as it progressed?

A. Not any of the minute details.

Q. Your firm financiered that deal, did they, Mr. Steele? 1903
That is, your firm furnished the money for putting that deal through?

A. No; I should hardly say that. May I explain what the arrangement was?

Q. Certainly.

A. The result finally reached was that the gentlemen who constituted the committee of the Burlington road issued a circular to the shareholders stating that options would be given to take joint bonds of the Great Northern and Northern Pacific for their stock, or to take part in cash, or to take all cash, 1904
provided a certain amount accepted the offer. It was made a condition by the Burlington committee that $50,000,000 of cash should be provided as part of the negotiations for the purchase of the entire amount of stock. My firm organized a syndicate who agreed to provide that amount of cash.

Q. That is, you had what is ordinarily termed an underwriting agreement?

A. To the extent of $50,000,000 of the bonds.

Q. Now, you had the negotiations, did you, Mr. Steele, with the committee or trustees or directors of the Burlington road? 1905

A. I had one meeting with the committee. That was the only personal part I took in it.

Q. And who was that committee?

A. Mr. Hunnewell, Mr. Paine, Mr. Forbes, and Mr. Olney.

Q. Mr. Perkins?

A. Mr. Perkins.

Q. Five?

A. Yes.

Q. Do you know Mr. Paine's first name?

A. I am not sure about that.

Mr. Stetson. Charles J. 1906

Q. When was that Burlington transaction completed, Mr. Steele?

A. I could not recollect the date. It would be shown by the circular which that committee issued. It was completed just prior to the issuance of that circular.

Q. You mean subsequent, do you not?

A. You said the negotiations.

1907 Q. Did I say the negotiations? I meant to say, when was the purchase consummated?

A. I think within a month or six weeks after the circular was issued.

Q. At the time negotiations were being had for the purchase of the Burlington, at that time was the composition of the Burlington board under advisement, to your knowledge?

A. It was not, sir.

Q. Do you mean it was not, to your knowledge, or it was not in fact?

1908 A. It was not, to my knowledge. I think I should have known of it if it had been.

Q. Do you know how much cash actually went into that Burlington transaction?

A. My recollection is that a large part of the $50,000,000 went in.

Q. And that was furnished by the underwriters?

A. Yes.

Q. Do you know who furnished the consideration for that underwriting agreement?

A. The Great Northern and Northern Pacific Railway com-

1909 panies.

Q. Combined?

A. Combined.

Q. Do you know, Mr. Steele, how much stock of the Burlington had been bought up previous to the time of the issuance of the circulars by the trustees or committee, as you have termed them, in the market?

A. So far as I am aware, there was none whatever, Mr. Boutelle.

Q. As a matter of fact, had there not been during the forepart of that year or the late winter of the year previous an

1910 attempt made by the Union Pacific to buy up the Burlington?

A. I do not know, sir.

Q. Had there not been eight or nine million bought up in that manner?

A. That I cannot tell.

Q. Do you know the occasion, or what it was started the Great Northern and Northern Pacific to make this attempted combined purchase?

A. I don't know what you mean by a combined—oh, a com- 1911
bined purchase of the Burlington?

Q. Of the Burlington.

A. I think I do. It was their desire to procure a connection with the east and southeastern country, which was the largest market for the agricultural, timber, and mineral products of the Burlington and Northern Pacific roads.

Q. Those conditions had existed for some time previous as well as that particular time, had they not, Mr. Steele?

A. They had, sir.

Q. Can you explain what was the immediate occasion—why 1912
it was that just at that time this combined purchase was attempted?

A. There was no other reason than that I have stated that I know of.

Q. By whom, Mr. Steele, was the matter of the proposed purchase first brought to your attention?

A. I couldn't say. I think the suggestion arose probably in our own office; as far as I know that was the first suggestion made about it.

Q. Then it originated in J. P. Morgan & Co.'s office?

A. Yes. 1913

Q. You were largely interested, or your firm was, at that time in the Northern Pacific?

A. We had a substantial interest; yes.

Q. And you also had an interest by representation that was very considerable, did you not, through foreign connection and clientele?

A. Well, up to that time, if I may explain, Mr. Boutelle, the 1st of January, 1901, the stock of the Northern Pacific road was embraced in a voting trust, of which there were five trustees, of whom Mr. Morgan was one. The voting trust elected the directors each year, and there had been no occa- 1914
sion to ask for proxies, if that was what was in your mind, so I could not say we had any representation.

Q. When was that voting trust dissolved?

A. January 1, 1901.

Q. That was after the annual election held in the fall of 1900?

A. Yes.

1915 Q. And as I recall it, the annual elections of the Northern Pacific are in October, are they not?

A. That is my recollection; they are in the autumn at any rate.

Q. Was there to your knowledge a pool or syndicate formed for the purchase of Burlington stock previous to the time of those negotiations with the committee or trustees?

A. Absolutely there was not to my knowledge.

Q. Did I ask you, Mr. Steele, in what month that purchase was completed?

1916 A. You did, and I answered that I thought it was about a month or six weeks after the circular was sent out; I do not recall the exact date.

Q. That would be sometime about April—no, a little earlier than that I guess.

A. If you can give me the date of the circular——

Q. Well, that is in the record, it will show for itself.

A. It was a month or six weeks, I think, after that.

Q. When was it first brought to your attention, Mr. Steele, that active efforts were being made in the market by certain interests to acquire control of the Northern Pacific?

1917 A. I think I should have to answer that that was never brought to my attention. It was in the late winter and spring of 1900 that we were aware that large transactions in Northern Pacific stock were taking place in the market, but no one had called our attention to it in the way you suggest.

Q. Well, when did you first ascertain that the Union Pacific, or interests allied with it, had acquired $78,000,000 of the Northern Pacific stock?

A. I think that the first knowledge that I had of that was when the annual report of the Union Pacific Railway Company was published, and it was then stated that that stock
1918 had been bought for the Oregon Short Line. As I originally said, I think that was in the autumn of 1901.

Q. Were you not aware, Mr. Steele, earlier than that time, that previous to May 1, 1901, there had been an effort made to buy up the Northern Pacific in the market?

A. I was aware, as I have stated, that there had been large purchases of Northern Pacific stock made.

Q. Now, when was it that your firm and Mr. Hill had their

first conference relative to standing together in the matter of 1919
their Northern Pacific holdings?

A. I do not recollect that I have testified that there was such a conference.

Q. I don't say you did. I ask you when it was Mr. Hill testified to that?

A. I am unable to say, sir.

Q. Well, were you present at any such conference at or about May 1, 1901?

A. I don't recall any conference. I know the question was discussed by my firm; whether Mr. Hill was there or not, I 1920
cannot undertake to say. But the question was discussed that there were large purchases of Northern Pacific stock being made, and that we would probably be looked to by the minority shareholders or outstanding shareholders to protect the Northern Pacific road from going into control of anybody else.

Q. And it was pretty definitely known and understood about that time that somebody else was trying to obtain control, wasn't it?

A. It was conjectured——

Q. Quite strongly conjectured?

A. I cannot say. It was very well known. 1921

Q. What I want to get at is whether you were present at a conference that was held at or about the 1st of May between some members of your firm and Mr. Hill?

A. Regarding what, Mr. Boutelle?

Q. Regarding Mr. Hill's holding or retaining his holdings in Northern Pacific—Mr. Hill and his friends, so termed?

A. I certainly had conferences with Mr. Hill on that subject about that time myself.

Q. Will you state to us the substance of that conversation 1922
or those conversations?

A. The substance of it was that there had been large purchases of Northern Pacific stock in the market and we were questioning whether ourselves and Mr. Hill and our friends held an actual majority of the stock, either common or preferred.

Q. Was that all there was to it?

1923 A. That was all there was at that immediate time; later on —well, it was within a few days—later on we feared that some of our friends had not held their stock. The stock had advanced quite sharply in the market and they had been tempted to sell, and we were not quite satisfied that taking Mr. Hill and ourselves and our friends together that we held a majority of the Northern Pacific common stock; we thereupon decided—I don't know whether Mr. Hill had anything to do with that or not—that it was important, and there was a moral obligation upon us to endeavor to secure that stock, and my firm proceeded to purchase Northern Pacific
1924 common stock.

Q. What I am more particularly anxious about at the present time is these conferences your firm had with Mr. Hill, and just what agreement or understanding you reached at those conferences between you, as you say, representing yourselves and friends, and Mr. Hill speaking for himself and friends?

A. I don't think there was any agreement at all. It was understood, and we certainly expected that Mr. Hill and his friends and our friends would hold their Northern Pacific common stock. There was no agreement with them to do so,
1925 and there was no obligation to do it if they didn't want to.

Q. I am not speaking about an obligation in the sense of a contract based upon a legal consideration, but an understanding of some kind was reached between your firm and Mr. Hill at that time that they would hold or retain their holdings, was there not?

A. It was certainly stated by Mr. Hill that he intended to, and it was stated by us that we intended to. That is all there was to it, Mr. Boutelle. I am not trying to dodge your question.

Q. I think you are one of the fairest witnesses, Mr. Steele,
1926 we have had, and I am sure I do not intend to insinuate you were dodging.

A. I am trying to save you the trouble of asking so many questions about it. We certainly expected Mr. Hill and ourselves and our friends that they would hold their common stock together and not sell it. That question was discussed and talked of, and it was understood by all of us that that

would be done, but there was no agreement or understanding 1927
on the subject. That is all I want to get in your mind.

Q. Now, Mr. Steele, was there nothing more to this conference than the matter of holding and of selling common stock?

A. No; that was the only thing, Mr. Boutelle.

Q. Was it not at one of those conferences—one of the earliest of those conferences—stated by Mr. Hill that if he retained his stock and did not sell out that the preferred stock of the Northern Pacific must be retired?

A. No, sir; that was decided long prior to the year 1901, 1928
when the voting trust went out.

Q. I understand that, but I am getting down now to whether or no that matter was discussed at or about this time.

A. It may have been stated that we were going to retire the voting trust, that the board was expected to retire it, and it was expected that they would.

Q. Refreshing your recollection to that extent, was it not quite positively stated, and stated by Mr. Hill, that he would retain his holdings, but that the preferred stock must be retired? 1929

A. I do not recall any such condition as that, Mr. Boutelle. May I add that I do not think it would be necessary, for we understood it, and Mr. Hill understood it, that the preferred stock was going to be retired.

Q. Was it understood that any particular plan was to be adopted for the retirement of that preferred stock?

A. I think not at that moment.

Q. Was it understood that a plan was to be adopted that would absolutely freeze out the preferred stockholders?

A. I don't think any plan was even discussed at that time, 1930
Mr. Boutelle.

Q. Was the matter brought up and talked over during those conferences at which you decided to make an attempt to obtain control?

A. It was not discussed in any way except it may have been mentioned that that was going to be done, as I above previously stated.

Q. Wasn't it furthermore stated directly that it would be

done, so that while it may not have been equivalent to a formal agreement that there was a perfect understanding between you gentlemen that that retirement was to be had that fall?

A. It was certainly understood by J. P. Morgan & Co. that the retirement would be in the autumn.

Q. Was it not so stated? I am not trying to get at what was in somebody's mind.

A. I think it was stated a great many times.

Q. At these conferences with Mr. Hill?

A. I could not say positively as to that, but either then or later or before. It was a thing thoroughly well understood to both of us.

Q. How much Northern Pacific did you and your friends, exclusive of Mr. Hill, control at that time, Mr. Steele?

A. What time are you now speaking of?

Q. The 1st of May, 1901.

A. I could not say as to our friends; we had at that time about $4,000,000 or $5,000,000.

Q. That is, you mean your firm?

A. My firm.

Q. Shortly after your conferences with Mr. Hill and some informal agreements or understandings were brought up, your firm went into the market and purchased additional Northern Pacific, did you not?

A. Shortly after the 1st of May we did. I must dissent from the conclusions of your questions, Mr. Boutelle.

Q. I don't want you to dissent from my conclusions. The court will be able to do that.

A. I don't want to be understood as agreeing to the conclusions that you put in your question.

Q. Well, is it not a fact, Mr. Steele, that subsequent to your conference with Mr. Hill your firm did go into the market and purchased large amounts of the common stock of the Northern Pacific?

A. We purchased large amounts—we thought they were fairly large amounts of the Northern Pacific stock between the 1st of May and the 7th.

Mr. Kellogg. Didn't I hear you objecting to leading questions?

Mr. Boutelle. Yes; but we are up against adverse wit- 1935
nesses right straight along, Mr. Kellogg, and you must make a little bit of allowance.

Mr. Kellogg. We want to give you all the latitude in the world, Mr. Boutelle.

Mr. Boutelle. That is appreciated, I assure you.

Mr. Stetson. And all longitude.

Mr. Kellogg. I simply suggested you were making some objections; that is all.

Q. Mr. Steele, when did your conference—or the first conference with Mr. Hill—at or about May 1, take place? 1936

A. I cannot give the exact date. It was somewhere about May 1.

Q. How many of these conferences did you have at or about that time?

A. I could not say; I probably saw Mr. Hill every day, at least if he was in town at that time. My recollection is, he was there about a week or ten days, and I saw him probably every day.

Q. And was there any conference with him, or conferring with him relative to the condition of the market, particularly as relating to the Northern Pacific? 1937

A. No; I don't think—about the condition of the market. We may have told him of the purchase we had made.

Q. Between May 1 and May 7, how much Northern Pacific common did you or your firm purchase?

A. I can't give you round figures, about $15,000,000.

Q. Was that stock purchased, Mr. Steele, on account of J. P. Morgan & Co. or on account of customers?

A. On account of J. P. Morgan & Co.

Q. Absolutely?

A. Absolutely.

Q. And J. P. Morgan & Co. paid for that stock then, with- 1938
out holding any securities back of it?

A. J. P. Morgan & Co.?

Q. Yes.

A. We did, sir.

Q. Was there any agreement or understanding at that time relative to the disposition of that additional stock you were then acquiring?

1939 A. No; there was not.

Q. And that stock was not bought at the request of any third person?

A. It was not, sir.

Q. You held then, with these additional purchases that you made, from $19,000,000 to $20,000,000 in round numbers of common stock.

A. Roughly, around $20,000,000.

Q. And how long did you continue to hold that?

A. We held it all until about the middle of the summer. I think it was the latter part of July or perhaps the 1st of Au-
1940 gust when we sold about $10,000,000 to Mr. Hill and to some of his friends, and to some of our own friends as well.

Q. And did you retain the remainder of your holdings down to the fall of 1901?

A. Yes.

Q. The only modification in your holdings was the sale of these $10,000,000, was it?

A. That is all.

Q. And that left you about $12,000,000 of Northern Pacific common?

1941 A. I think about ten, or under ten.

Q. Do you still hold that, Mr. Steele?

A. We do not.

Q. What disposition was made of that $10,000,000?

A. That we held?

Q. Yes, sir.

A. We sold it to the Northern Securities Company.

Q. Was that a sale to the Northern Securities Company in exchange for its stock?

A. We sold it to the Northern Securities Company and they paid us in their stock.

1942 Q. Do you still retain that stock of the Northern Securities Company?

A. We do, I think, all of it.

Q. There was no agreement in reference to any disposition by you of that $10,000,000 to any other interest than the Northern Securities Company?

A. There was no agreement with the Northern Securities

Company either. There was no agreement with anybody 1943
about it.

Q. And you still hold the Northern Securities Company stock?

A. We do.

Q. Is that stock held by you absolutely, or held as collateral?

A. Absolutely.

Q. And you have no obligation back of that purchase?

A. None whatever.

Q. Were you present, Mr. Steele, at the conference of May 1944
9, at which it was decided to leave the selection of board of directors of the Northern Pacific to Mr. Morgan?

A. I was present at this conference, but it wasn't May 9.

Q. It was May 11, wasn't it?

A. Oh, no, I think it was about a week or two later.

Q. Who were present at that conference, Mr. Steele?

A. Mr. Hill and Mr. Harriman, Mr. Schiff, Mr. Bacon, and myself, I think.

Q. Was Mr. Baker there? George F., isn't it?

A. Mr. Baker? No, he was not there.

Q. Mr. Bacon? 1945

A. That was my partner.

Q. That is the gentleman who was in Europe. When was the next conference you had with either Mr. Schiff or the Harriman interests?

A. I don't recall any other conference I had with either Mr. Schiff or Mr. Harriman.

Q. Or anyone representing the Oregon Short Line interests?

A. No, sir.

Q. What was the substance of the negotiations that were had at that conference that you have referred to? 1946

A. I shall have to go back a little to answer your question fully, Mr. Boutelle. On the 9th of May there was a great disturbance in the stock market here, and the newspapers were full of stories of great contest for control of the Northern Pacific between important financial interests. They had succeeded in creating a condition of great excitement in financial circles. People were in danger of failure. There

1947 was a lack of confidence around, and the purpose of this conference was to devise a statement that could be made public, assuring the public generally that they were mistaken and there was no such trouble on hand. The conference was very brief—I think it lasted not more than ten or fifteen minutes—and Mr. Harriman, I think it was, suggested that the purchase of Northern Pacific stock, or the Northern Pacific stock which had been purchased by or in their interests, they were quite willing to give Mr. Morgan a proxy and let him fix the composition of the board of directors of the Northern Pa-
1948 cific in the autumn, and they thought that would remove any question in the public mind about any friction or contest between different interests.

Q. Was there anything stated at that time as to the amount of the respective holdings?

A. There was not; no, sir.

Q. That was not discussed?

A. Not discussed at all.

Q. Did you have or were you present at any other conference with the Harriman or Oregon Short Line interests subsequent to that?

1949 A. I don't recall any until possibly late in the autumn. Sometime in November. I think I had one conference at which Mr. Harriman was present regarding the sale of the Northern Pacific stock which they held.

Q. Between those dates, then, you know nothing of the negotiations that were had between Mr. Harriman, the Oregon Short Line interests, Mr. Hill and Mr. Morgan.

A. I don't think there were any.

Q. I am not asking you about what you think, I am asking you if you know of any.

A. I don't know of any.

1950 Q. How much were the holdings of the Oregon Short Line in Northern Pacific?

A. I never knew exactly what they were. Roughly it was discussed as being about 78,000,000. I say I never knew until late in the summer of 1901 when that stock was transferred into the names of Mr. Harriman and Mr. Pierce, and we assumed that that was the stock which they had been talking of, and that gave us the amount as about 78,000,000.

Q. Were you present, Mr. Steele, at the time the plan of re- 1951
tirement of Northern Pacific preferred as ultimately carried out was under discussion?

A. I am a member of the Northern Pacific board, and I was undoubtedly present when it was discussed there.

Q. That is not what I mean. The plan, as ultimately carried out, was already drawn up and submitted to the board and simply formally passed, was it not, as a board? Were you present at the conferences when that plan was decided upon?

A. The plan was made up in my office. My firm were the 1952
fiscal agents of the Northern Pacific Company, and they looked to us to suggest some plan for financing this action that they had determined upon, and we suggested this plan.

Q. Well, when was that plan suggested, Mr. Morgan?

A. Mr. Morgan?

Q. Or, Mr. Steele, pardon me.

A. You flatter me, sir. It was very shortly before the meeting of the board, at which the matter was to be presented to the board. That meeting was about the middle of November, and I think this plan was gotten up about a week before. 1953

Q. I am not asking you in regard to when it was formerly drawn up, but when it was first discussed.

A. That is what I mean, Mr. Boutelle. It was first discussed, I think, about a week or ten days before a meeting of the board.

Q. And you intended by that, Mr. Steele, to state that matter was not discussed earlier in your office to your knowledge?

A. Not that I recollect.

Q. When was the plan of the organization of the Northern Securities Company first brought to your attention? 1954

A. I think early in the year 1900, as soon as I was in the office, almost.

Q. In 1900 the Northern Securities Company was brought to your notice; early in the year, was it?

A. Perhaps I am wrong under that title. I think that was brought to my notice—it was the autumn of 1901. I could not come very close to it.

1955 Q. When was the plan of transferring to the Northern Securities Company, the stock in the Northern Pacific, first brought to your attention?

A. May I ask what stock in the Northern Pacific you mean, Mr. Boutelle?

Q. All the stock that could be obtained.

A. I never heard any such plan as that at all.

Q. Will you modify that question by saying any stock of the Northern Pacific, then?

A. That was brought to my attention about midsummer of
1956 1901. It came about shortly after Mr. Morgan's return from Europe, which was early in July. The question of transferring that stock to the Northern Securities Company I am not sure was discussed at that time. The question of forming some sort of a holding company to hold the Northern Pacific stock, which we had bought and which was held by our friends at that time, was discussed about then.

Q. Did your firm have anything to do with the organization of the Northern Securities Company?

A. No, sir.

Q. That was a deal entirely outside?

1957 A. Outside; yes.

Q. The matter of organizing a securities company, you say, was first brought to your attention in the summer?

Mr. Stetson. He didn't say that. He said in the early part of 1900.

Q. I am getting at his last answer just before this. Did I state that incorrectly, Mr. Steele?

A. In this, Mr. Boutelle. I said in the summer of 1901 the matter of putting the Northern Pacific stock which we held into a securities company was first brought up.

Q. That is what I mean. What I was coming at is wasn't
1958 the matter of the retirement of the preferred stock discussed and the plan under advisement at the same time as the plan for organizing a securities company to turn over the N. P. stock?

A. No, sir. The matter of retiring the preferred stock was never under discussion. It was considered a settled thing, as far as we were concerned, and the question of the particular

plan I don't think came up until shortly before the directors' 1959
meeting at which it was to be acted on.

Q. Do you know how Mr. Hill and certain parties interested with him happened to buy the 10,000,000 of your 15,000,000 or 16,000,000 purchase?

A. I do not, except I think they thought it was a good investment.

Q. I want to know if you know the facts?

A. I don't know, sir. My knowledge of the facts would be confined to the simple statement that they wanted to buy it, we were willing to sell, and we sold it. 1960

Q. When the plan or discussion as to the retirement of the preferred stock was first brought up, who was present?

A. Do you speak now of the retirement of the preferred stock or the plan?

Q. No; I am speaking about the discussion of a plan—formulating a plan.

A. I couldn't say. It was, I think, in our office, and I think it was discussed by Mr. Bacon and myself, probably.

Q. Was Mr. Hill a party to any of those discussions or conferences?

A. That I couldn't say. I am quite sure he knew what the 1961
plan was to be.

Q. And that plan was made up as a result of conferences held between you and Mr. Hill and the parties that represented him?

A. No, sir.

Q. Are you positive in regard to that?

A. Quite positive, sir.

Q. What did your firm have to do with the purchase of the Harriman interests in the Northern Pacific, Mr. Steele?

A. My impression is it was my firm that conducted that 1962
negotiation entirely.

Q. Will you state what those negotiations were?

A. I will as nearly as I can, and I think I know the substance of them, Mr. Boutelle. It was after the meeting of the Northern Pacific board, as I recollect it, at which it was resolved that the preferred stock was to be retired. Whether the suggestion came from Mr. Harriman or not, I couldn't quite say, but the question was taken up between Mr. Harri-

1963 man and ourselves as to the disposition of the Northern Pacific stock which they had.

Q. When was this, pardon me?

A. I think it was a little after the middle of November, after the meeting of the Northern Pacific board, at which it was resolved to retire the Northern Pacific stock. They expressed a desire to be allowed to part with their stock. It had become, or would become, by the retirement of the preferred stock, a minority interest, and it was rather an unsalable commodity, as the stock had practically been withdrawn
1964 from the market, and they asked us if we wouldn't undertake —I say they asked us, it came up between us, I am not sure which one suggested it—undertake to get the Northern Securities Company to buy their stock. We finally agreed upon a basis by which they agreed to sell their stock for a lump sum, which was to be payable partly in cash and partly in stock of the Northern Securities Company. At that time Mr. Harriman—I shall have to apologize whenever I say Union Pacific, because I never really knew whether that was so—Mr. Harriman and his friends held both common and preferred stock, in the proportion, I think, of about 37,000,000
1965 common to 41,000,000 preferred, in round figures, and their proposition was to sell us that stock in one block for a fixed sum which was to be paid partly in cash and partly in Northern Securities Company stock, and we undertook to try and get the Northern Securities Company to buy that stock on those terms, we acting as bankers between them.

Q. You acted then in that transaction, as I understand it, as middle men?

A. As bankers.

Q. That is, it was not a purchase outright by your firm?

A. No.

1966 Q. Or a purchase in which your firm obligated themselves to pay a fixed amount of cash?

A. No, it was only a purchase by us if we succeeded in getting the Northern Securities Company to take it, and the terms were that we were to turn over just exactly what we got.

Q. You were really, then, in negotiation with the Northern

Securities Company; you were really negotiating for the Union Pacific, or Harriman, or Short Line interests? 1967

A. We were bankers in between. I wouldn't say we represented either side particularly. We were very often put in that position.

Q. You were financial agents and you were requested or instigated to make the transaction or attempt the transaction by the Harriman interests?

A. Well, we did undertake it for them.

Q. And at their request?

A. With their approval, at any rate.

Q. Well, it was a little more than with their approval, was it not? How did you happen to undertake the negotiation at all? 1968

A. I say I am not quite sure which side suggested it first, whether they asked us to do it or we suggested it to them, but it was one or the other, and as a matter of fact we did undertake it for them.

Q. And whatever you obtained as a result of those negotiations from the Northern Securities Company was what you turned over to the Oregon Short Line?

A. Well, we turned it over to Mr. Harriman. 1969

Q. Was there any written memorandum or agreement of that purchase?

A. No, sir.

Mr. Stetson. It was too large for that, Mr. Boutelle. It was a good thing, too, because writings are bad things to have floating around.

Q. Are you a member of the board of directors of the Northern Securities Company?

A. I am not, sir.

Q. Are you a member of the board of directors of the Northern Pacific? 1970

A. I am.

Q. And of the Burlington—either lines?

A. No, sir.

Q. Neither railroad nor railway?

A. Neither.

Q. Did you attend the meeting of the board of directors of the Northern Pacific on July 23, 1901?

1971 A. I couldn't recollect the date, Mr. Boutelle, but I probably did, as I was here that time.

Q. Was there any meeting either of the executive committee or the board of directors of the Northern Pacific between May 9 and July 23?

A. Well, I presume there was; I couldn't recall any particular meeting.

Q. You were not present at any such meeting?

A. I think probably I was. The board meets monthly, and I think the monthly meetings were held. I am not a member of the executive committee.

1972 Q. Not a member of the executive committee of the Northern Pacific?

A. No.

Q. Are you aware, Mr. Steele, whether there were any negotiations with Mr. Harriman, or the Oregon Short Line interests, previous to this in November?

A. With reference to what, Mr. Boutelle?

Q. The sale of the Northern Pacific holdings.

A. Not that I know of.

Q. Were you aware that at the time Mr. Harriman was

1973 placed on the board of the Northern Pacific?

A. Was I aware that he was put upon the board?

Q. Were you aware of that fact at the time it was done?

A. I was. I think I was present at the meeting when he was elected.

Q. That was five directors that resigned or retired at that time?

A. Yes, sir.

Q. And five new ones selected and appointed by Mr. Morgan?

A. Well, suggested by Mr. Morgan.

1974 Q. And what you suggested went as a matter of fact, didn't it?

A. It happened to at that time.

Q. Do you know, Mr. Steele, whether there was any controversy or understanding relative to Mr. Harriman's being placed on the Northern Pacific board prior to that time?

A. I do know absolutely there was not.

Q. Do you know how he happened to be placed on the 1975
board of directors of the Burlington?

A. I do, sir.

Q. Will you state how it was?

A. You only want the Burlington now?

Q. Yes, sir.

A. There had been some apprehension, I think, in the minds of Mr. Harriman and some of his friends that difficulties might arise through the fact that the Great Northern and Northern Pacific had purchased the Burlington road and it was a menace to the Union Pacific. I talked it over, I think, with Mr. Morgan, and said, "Why not let us suggest that Mr. 1976
Harriman go on the board, and he can see there is nothing intended as a menace in any way?" and he approved of the idea; and I don't know whether I made the suggestion or whether Mr. Bacon did, when the Burlington meeting came around, that Mr. Harriman should be elected a director of that board, and he was, at any rate, elected at that meeting. That, I think, was quite late in the autumn.

Q. Did the same thing hold good in the election of George J. Gould to the same board?

A. Yes.

Q. Mr. Gould is also a member of the Union Pacific board, 1977
is he not?

A. I think he is.

Q. Did the same thing hold good in regard to the election of Jacob H. Schiff to the Burlington boards?

A. I don't know whether Mr. Schiff would be considered so much as representing Union Pacific interests as Mr. Harriman, but Mr. Schiff had been one of Mr. Harriman's associates, as we understood it.

Q. During this contest that had been going on during the spring? 1978

A. I never knew there was any contest going on, Mr. Boutelle. I will say during the spring. There was never any contest, except in the newspapers.

Q. We will call it this friendly bout that was had here along about May.

A. I should say during the spring of 1901.

Q. Were all these Union Pacific gentlemen placed on those

1979 boards, according to your understanding, merely to show Mr. Harriman that the Burlington was not a menace?

A. You say those boards; do you mean the Burlington boards?

Q. Yes, sir.

A. That was absolutely the only reason, to my knowledge.

Q. Mr. Harriman was also made a member of the Northern Securities board, was he not?

A. I think he was, Mr. Boutelle.

Q. And a member of its executive committee?

A. That I don't know.

1980 Q. Were you present at a conference where both Mr. Hill and Mr. Harriman was present, when the subject of Burlington extensions into Union Pacific territory was brought up?

A. No; I don't recall any such.

Q. Was the subject of Burlington extensions brought up at any conference at which you were present.

A. Not that I recall.

Q. Nor any interference with Union Pacific territory by the Burlington?

A. No.

1981 Q. You don't recall that subject having been brought up or discussed?

A. Not at any meeting where I was present.

Q. Previous to the winter of 1900-1901 had your firm either purchased or financed any considerable amount of the Burlington stock?

A. I don't think we ever had anything to do with it, Mr. Boutelle.

Q. No transaction whatever in Burlington?

A. No; nothing of any consequence, at any rate. I couldn't say positively that some customer might not have bought a

1982 100 shares, but nothing of any consequence.

Q. You neither bought yourself, nor bought for anyone, nor financed any transaction in Burlington stock during that time?

A. No, sir.

Q. Previous to what you have testified to?

A. No.

Q. When was the time that the ratio at which the stocks

of the Northern Pacific and Great Northern were to be turned 1983
into the Northern Securities Company first brought to your attention?

A. The only time it ever came to my attention was when the suggestion was made that the stocks which we hold—the Northern Pacific which we hold, or our friends—should go in.

Q. You personally had nothing to do with the fixing of that ratio?

A. As a member of my firm, I may have had a little to do with it.

Q. I mean aside from that—aside from the particular deal 1984
that your firm had—you had nothing to do with fixing that ratio?

A. No.

Q. Do you know, as a matter of fact, when that ratio was fixed, the per cent at which Great Northern and Northern Pacific should be turned in?

A. I don't think it was ever absolutely fixed, Mr. Boutelle, so far as the Northern Pacific was concerned. The negotiations which we had with the Northern Securities Company with regard to the stock which we had was a transaction by itself; the subsequent negotiations under which they took in 1985
the stocks which Mr. Harriman held, at our suggestion, was taken on a different basis.

Q. Hadn't the basis on which the Harriman stock was to be turned in been decided a considerable time before the Harriman negotiations were actually consummated?

A. No, sir.

Q. On what basis was the Harriman common stock turned in?

A. There were no pro rata basis. It was a round lump sum for all the common and preferred stock.

Q. And what did you say that was? 1986

A. The amount?

Q. Yes.

A. I don't think I have testified to that before. I give it to you as nearly as I can. It was, in round figures, about $90,000,000 for all.

Q. For the $78,000,000?

1987 A. Yes; of common and preferred; and that was paid partly in securities and partly in cash.

Q. Did you or your firm hold any of the preferred?

A. Do you mean at this time?

Q. Yes.

A. No; we did not then, I am sure.

Q. Did you hold it during the summer of 1901?

A. I think not.

Q. Your holdings are almost exclusively in the common stock?

A. Yes.

1988 Q. Do you represent, as a firm, Mr. Steele, any other common stock holders than your own holdings?

A. I don't think so, Mr. Boutelle. I don't recall that we did, unless, perhaps, Mr. Baker.

Q. Did you, as a matter of fact, act for or represent any other holders of Northern Pacific common in negotiating transfers to the Northern Securities Company?

A. I don't think we did. We made our negotiations with the understanding that it was to apply to stock held by our friends, if they wanted it, and they accepted it.

1989 Q. When you speak of your friends, that is a little bit indefinite. Who were they, or what was the amount of their holdings?

A. Well, they held, together with what we had, and I include Mr. Hill in the list, between $41,000,000 and $42,000,000 of common stock.

Q. And that included Mr. Hill's holdings, did it?

A. Yes; and Mr. Kennedy and Mr. Baker and Mr. Jones and those gentlemen.

Q. They held originally about $18,000,000 or $19,000,000, did they not—that is, in May, 1901?

1990 A. I don't know, though they must have held at least that much, probably a little more, because with our purchase, which, added to the previous holdings, was something like $20,000,000, added to the stock of the gentlemen whom I called my friends, we had about $41,000,000 or $42,000,000.

Q. The ratio at which your Northern Pacific common was turned in was 115?

A. Yes.

Q. And you don't know when that ratio was first decided upon, or by whom? 1991

A. Yes; I tried to answer. I think that was decided upon between Mr. Hill and ourselves, and it was along in the late summer of 1901.

Q. When was it decided and by whom as to the ratio at which the Great Northern should be turned in?

A. That I don't know, sir.

Q. Did you surrender or turn in your stock in the Northern Pacific without knowledge as to the basis at which the Great Northern was to be acquired at? 1992

A. No; we had knowledge; it was to be 180.

Q. That had been fixed and determined?

A. Yes.

Q. But you did not know when nor by whom that had been fixed in that manner?

A. I do not know, sir.

Q. When was the matter or subject of turning in the Great Northern and Northern Pacific stock to the Northern Securities Company first brought to your attention?

A. The subject of turning in the Great Northern into a holding company had been brought to my attention a year or more before. 1993

Q. We have heard of that.

A. Just when it was called the Northern Securities Company I do not know. I knew a holding company was to be formed, into which I assumed that Mr. Hill and his friends were going to put their Great Northern stock. The first time that my attention was called to the fact that the Northern Pacific stock would be taken in as well was when we made our negotiation to put in our Northern Pacific stock which our friends held, as to which I have testified.

Q. That was when? 1994

A. That was late in the summer of 1901—September or October.

Q. And that was before the Northern Securities Company had been organized?

A. The papers had not been filed at that time.

Q. As a matter of fact, Mr. Steele, the entire plan of taking over the stocks of both the Great Northern and Northern Pa-

1995 cific had been outlined and fully decided upon during that summer, had it not?

A. Not to my knowledge, sir.

CROSS-EXAMINATION.

By Mr. Stetson:

Q. Mr. Steele, I would like to get some dates. Do you remember when Mr. Morgan went to Europe in the spring of 1901?

A. It was about the end of March.

1996 Q. Do you know when he returned?

A. It was early in July; I should say about the first week in July.

Q. Was it not the 4th of July?

A. I think it was.

Q. It was on the 4th of July. Did Mr. Morgan go to California in the autumn?

A. He did.

Q. Do you know when he went?

A. I don't recollect exactly; I think it was sometime in

1997 September.

Q. Do you know when he returned?

A. My recollection is it was pretty nearly in November, or late in October.

Q. Was it not the very end of October?

A. I think so.

Q. You have been asked something as to the time of the formulation of the plan for the retirement of the preferred stock of the Northern Pacific. Wasn't that plan formulated entirely after his return from California?

A. Yes.

1998 Q. Do you happen to know that I came back at the same time?

A. I recollect it, sir.

Q. And were all the papers with reference to the plan drawn wholly either by you or by me?

A. Yes, and all after that time.

Q. All after that date. Now, do you know when Mr. Bacon went to Europe?

1999

A. It was early in November.

Q. How early with reference to election day?

A. I don't remember the date of election day.

Q. Was it not the 6th or 7th of November?

A. My recollection is it was the 6th.

Q. And was not the formation of the Northern Securities Company entirely after Mr. Bacon's departure?

A. Altogether; yes.

Q. Mr. Bacon has not been in this country since that time, has he?

A. He has not.

2000

Q. Mr. Bacon was not here at the time of the conclusion of the plan, or the adoption of the plan, for the retirement of the preferred stock, was he?

A. Not when it was adopted by the board of the Northern Pacific Company.

Q. Did any plan or proposition of which you have any knowledge for the retirement of the preferred stock have any relation to, or any connection with any agreement, or any statements with, by or to Mr. Hill?

A. Absolutely none.

Q. I ask you the same question with reference to Mr. Schiff.

2001

A. I make the same answer.

Q. The same question with reference to Mr. Harriman.

A. The same answer.

Q. The same question with reference to the formation of the Northern Securities Company.

A. The same answer.

Q. The retirement of the preferred stock to your own knowledge was wholly independent of these persons and this corporation, and any connection therewith?

A. Absolutely.

Mr. Boutelle. You make a first-class witness, Mr. Stetson.

2002

Mr. Stetson. I am cross-examining your witness.

Q. When was there first brought to your attention the adoption or the formation of any company, whether called the Northern Securities Company, or by any other name, to hold the stock of the Northern Pacific or the Great Northern Railway Company?

A. The question of a holding company for the stock of the

2003 Great Northern Railway Company was brought to my attention, I think, in the spring of 1900, almost the first time that I went into the firm of J. P. Morgan & Co. The idea of a holding company to hold stock of the Northern Pacific Company was brought to my attention along about the latter part of the summer of 1901.

Q. You state that the purchase of the so-called Harriman stock by J. P. Morgan & Co., as bankers, was made with the idea of a resale thereof, or an arrangement for the resale thereof to the Northern Securities Company?

Mr. Boutelle. I must object to your putting words into
2004 my witness's mouth.

Q. I am going to bulldoze your witness. Well, having listened to the colloquy between Mr. Boutelle and myself, will you now proceed to state the facts in that regard?

A. I have stated that the idea of the purchase by J. P. Morgan & Co. of the Northern Pacific stocks held by Mr. Harriman and his friends was with the idea and understanding that they were to be offered to the Northern Securities Company on terms exactly the same as those upon which they were taken by J. P. Morgan & Co., and that the proceeds of the
2005 sale received by J. P. Morgan & Co., if the sale was consummated, were to be turned over to Mr. Harriman and his associates, and this is what was done.

Q. Do you know of any hitch or difficulty in the completion of doing what was done?

A. There was quite a hitch, which arose from the fact that in our talk with Mr. Harriman and his friends we had assumed that their holdings of preferred and common stock were somewhat larger than they actually proved to be, and we had negotiated with the Northern Securities Company upon that basis. When they came to deliver the stock, which
2006 was the first time that we knew accurately just how many shares of stock they held, it turned out that they did not have quite so much as we supposed in the negotiation, and had represented to the Northern Securities Company that we did have. The Northern Securities Company consequently refused to take that amount of stock on the same basis that they had agreed for the amount which they supposed was to be delivered. We succeeded in effecting a compromise under

which the Northern Securities Company accepted the amount 2007
of stock, which Mr. Harriman and his friends were able to deliver, but a substantial reduction in the price was made owing to the fact that the amount was not as great as the Northern Securities Company had supposed it would be.

Q. Do you remember the date on which that compromise price was decided upon, and the transfer actually made? Not the transfer actually made, but the sale completed?

A. No; I couldn't remember the date; it was toward the latter part of November.

Q. Do you remember the day of the week? 2008

A. No; I can't remember the day of the week.

Mr. Boutelle. You are not trying to make my witness say it is Sunday, are you?

Mr. Stetson. Now, if you have got so much objection to the way I testify, I am going to let Mr. Kellogg ask some questions.

By Mr. Kellogg:

Q. I understand you, Mr. Steele, that when the Northern Securities Company was organized, the so-called Harriman stock had not been purchased by you, or by anyone for that company. 2009

A. It had not been purchased by us.

Q. And, so far as you know, no arrangements for this sale to the Northern Securities Company had ever been made?

A. No, sir.

Q. Well, was there, as far as you know, any connection between the organization of the Northern Securities Company and the acquisition of the Harriman stock?

A. None whatever.

Q. In dealing with the Northern Securities Company for the sale of stock, did the Northern Pacific stockholders act separately or in a body? 2010

A. As to that I can only state what I think I have already testified to—that my firm made the negotiations as to the price at which the stock which we held should be sold to the Northern Securities Company, and it was understood that our friends, by which I intend to mean the same persons that I tried to describe to Mr. Boutelle, were to have the right to put their stock in at the same figure. There was no binding

2011 agreement on our part that they should, and we had no authority to obligate them to do so. It was a matter for individual determination by each Northern Pacific stockholder, and extended only to those whom I have included as our friends, constituting in amount about 41,000,000 or 42,000,000.

Q. Was the fact of acquiring a majority of the stock of both or either the Northern Pacific or Great Northern Railway companies made a condition of the organization of the Securities Company, so far as you know?

A. Not to my knowledge, sir.

2012 Q. Well, do you know that it was determined to form the Northern Securities Company without knowing whether they would acquire a majority of either one of the companies, either the Northern Pacific or the Great Northern?

A. I have always understood that it was intended to form that company anyhow independently of getting any Northern Pacific stock whatever, and independently of getting a majority of the Great Northern stock, as I have already testified. I understood that company was to be formed originally to hold the Great Northern stock which was owned by Mr. Hill and some of his associates, which I understood amounted to

2013 about $30,000,000 or $35,000,000.

Q. Was there any agreement between J. P. Morgan & Co. or J. P. Morgan and his associates and Mr. Hill and his associates to organize the Northern Securities Company, and to transfer to it the ownership of a majority of the Northern Pacific and Great Northern Railway companies' stocks?

A. None whatever.

Q. Was there any agreement of any such character?

A. Not to my knowledge.

Q. In the organization of the Northern Securities Company did your firm speak for a majority of the stockholders

2014 of the Northern Pacific or act at all other than for your personal interests—your own interest—or did you have anything to do with organizing the Northern Securities Company other than to sell to it your stock?

A. I was about to answer that I have already testified that we had nothing to do with the organization of the Northern Securities Company, and the first connection that we had

with it was the negotiation by which we sold to it the North- 2015
ern Pacific common stock which we held.

Mr. Stetson:

Q. So far as you know, or as was known to your firm, so far as you know, in the organization of the Northern Securities Company, or in the transfer thereto of the stock of the Northern Pacific Railway Company, or the Great Northern Railway Company, was there any purpose or intent to suppress competition or in any way to control competition or restrain trade or commerce between the States or within the States or within any State? 2016

Mr. Boutelle. That is objected to as incompetent, irrelevant, and immaterial, and not proper cross-examination, going into a subject not covered by the direct. I suppose I should state to my witness that the examiner does not rule and he ought to answer.

A. I answer there was not.

Mr. Stetson:

Q. Or was there any purpose or intent in such organization or in connection therewith, so far as known to you, to regulate rates or to maintain rates upon railroads?

Mr. Boutelle. The same objection as the last. I suppose 2017
my previous objection can be taken to the question as amended.

Mr. Kellogg. Oh, yes; and considered as renewed to each question.

A. There was not.

By Mr. Boutelle:

Q. Mr. Steele, I understood you to say on cross-examination that this plan of retirement as ultimately carried out was brought up and considered first sometime in the fall just previous to the meeting of the board of directors?

A. That is my recollection. 2018

Q. Do you know how it happened that a plan of retirement was adopted that prevented the preferred stockholders from participating in the benefits and obtaining convertible certificates? Do you know how or why that plan was adopted?

A. I know how it was adopted. It was adopted by a vote of the board of directors.

2019 Q. Yes; that was an unfortunate way of putting it by me.

A. Why it was adopted was, it was considered by us, my firm, who were fiscal agents, and by the board of directors, as a fair, equitable, wise, and expedient plan to pursue.

Q. And it was also considered by your firm that if any other plan was adopted, or if the preferred stockholders were given equal privileges in the retirement, that it would throw the control into this other interest that had the $78,000,000, was it not?

A. No, sir.

Q. That was not considered at all?

2020 A. We never took that in consideration at all.

Q. As a matter of fact, that would have been the effect, would it not, Mr. Steele?

A. That I couldn't say.

Q. Well, it is a matter of mere arithmetical computation, isn't it?

A. It depends entirely upon what the plan had been. I think you could draw that conclusion as well as I.

Q. That preferred stock had been outstanding since the date of the organization?

2021 A. Yes, sir.

Q. And previous to May 9, 1901, no plan had been proposed or acted upon for its retirement, had it?

A. No definite plan had been proposed.

Q. Do you know why it happened to be taken up and acted upon at this particular time?

A. I do. It had been intended from the time of the organization to retire the preferred stock as soon as the company became financially able to do so. The voting trust by its terms continued until January, 1902, I think it was, but in the fall of 1900 the company had become very prosperous, it was

2022 very strong, and it was deemed by the voting trustees that that they had fulfilled the purposes of their trust, and that they could properly dissolve the voting trust on the 1st of January following, which was 1901. The only uncompleted object of the reorganization was the retirement of the preferred stock, and they intended at the time that the voting trust was dissolved that the preferred stock should be retired on the 1st of January, 1902, that being the first date

after the retirement at which it could be retired under the provision of the charter, by-laws, and stock certificate. 2023

Q. Was there any such action as that taken by the board of directors in the early part of 1901 at the time the voting trust expired?

A. I think not, sir.

Q. And, so far as you know, the first action that was taken was taken after these conditions occurred that you have already described in the market?

A. The first action taken by the board was on the 13th of November, 1901.

Q. You state that the company was financially able. As a matter of fact the plan of retirement as carried out was practically a paper plan, was it not? 2024

A. I don't know exactly what you mean by a paper plan. I thought it was a very good plan.

Q. What I mean is simply this: That the common stock holders took the certificates of indebtedness and converted the certificates of indebtedness into common stock, so that there is precisely the same amount of stock outstanding in the Northern Pacific to-day that there was before.

A. That is true; there is the same amount of stock outstanding to-day as there was before. 2025

Q. The only difference is that the Northern Pacific has converted preferred stock which it could retire at any time into common stock, and has paid an immense commission to somebody for underwriting and putting through that deal. That is the financial part of it, isn't it?

A. No, I shouldn't say it was.

Q. They didn't have that deal put through without any commissions, did they?

A. My impression is it didn't cost them anything.

Q. Who paid for the underwriting? 2026

A. There was nothing paid for it; it was considered a sufficient inducement to the underwriters to take the convertible bonds at par. The plan was this——

Q. I understand the details of the plan.

A. I want to explain the reason why there was no commission.

Q. Was there commission to the Standard Trust Company?

2027 A. No; I think not to the Standard Trust Company either.

Q. So it was gratuitous all the way around?

A. Not at all, sir.

Q. Let us hear where it was not.

A. That is what I wanted to explain to you. The Northern Pacific Company had to raise $75,000,000 cash to pay $75,000,000 of preferred stock, they being advised by counsel, learned in the law, that the only thing the preferred stock holders were entitled to was to receive their cash. In order to raise that they decided to issue $75,000,000 of convertible
2028 debentures, and in order to give the common stock holders a chance to get those debentures at par they made a contract with the Standard Trust Company—I think you have that in evidence—under which that company agreed to buy all those debentures at par, but agreed also to offer them on the same terms to the common stock holders. Now, their chance of profit was that some of the common stock holders wouldn't take them, and they were quite willing to underwrite those debentures at par, because it would have been a profitable thing to get them at par if the stockholders had not taken them. That was the consideration for the underwriters.

2029 Q. So that those certificates were considered worth more than par?

A. Not necessarily.

Q. Then what was the profit?

A. They were considered as worth par.

Q. What was the profit in buying something at par that was worth par?

A. It might ultimately go higher. It was pretty well considered it would go higher, and my opinion was that it would go higher.

Q. And that, in your opinion, was the consideration for this
2030 Standard Trust Company's agreement, instead of a commission?

A. Yes, sir.

Q. Notwithstanding this so-called benefit that you have referred to from taking the certificates at par, the Standard Trust Company, before that agreement was carried out, did have a collateral underwriting agreement, didn't it, to furnish this money?

A. Yes. 2031

Q. And the same consideration and inducement moved to the underwriters that moved to the Standard Trust, did it?

A. I think so, sir.

Q. The obligations, counting stock as an obligation, of the Northern Pacific had not then changed? There was $155,000,000 out before and there is $155,000,000 out now; that is correct, isn't it?

A. That is correct; yes.

Q. But you have, by this plan of retirement, put those who held the preferred stock to one side and coppered the entire issue of the common stock for the common stock holders? 2032

A. I cannot quite yield to the epithets of counsel in regard to the transaction. The undoubted result was that the preferred stock was paid off in cash at par, and the common stock holders, through taking the convertible certificates and exchanging them into common stock, have got practically all of the additional common stock.

Q. We understand that. That was the purpose and intent of the people in the Northern Pacific who put this plan of retirement through to prevent the preferred stock holders having any part in the issue of the common? 2033

A. It was not their purpose to prevent it; it was their purpose not to offer it to them.

By Mr. Stetson:

Q. How long have you been familiar with the affairs of the Northern Pacific?

A. Ever since my connection with the firm of J. P. Morgan & Co., which was early in the year 1900.

Q. Had you not previously made a careful study of the plan of reorganization of the Northern Pacific?

A. I had read it and studied it on several occasions. I think I used it as a model in some others. 2034

Q. Had you ever heard or known of any plan for the retirement of preferred stock which did not exclude the preferred stock holders and operate to the benefit of the common stock holders?

Mr. Boutelle. Objected to as incompetent, irrelevant and immaterial, and not proper cross-examination.

A. I had not, sir.

2035 Q. In the plan discussed for the retirement of the preferred stock was there any question ever raised to your knowledge, or any doubt expressed, that such retirement should be for the benefit of the common stock holders, and effectually and finally should withdraw all interest of the preferred stock holders?

A. None to my knowledge; never.

Q. And these discussions as to the plan of retirement of the preferred stock, to which you have made reference, concerned only the way of effecting that retirement and not the terms that should be offered to the holders of preferred
2036 stock?

A. There never was any discussion as to anything being offered to the preferred stock holders except par in cash.

Q. As stated in their contract?

A. Yes.

Q. Now, was it practicable to retire the preferred stock until the common stock reached par, or until the company could make a sale of bonds bearing interest at a rate of less than 4 per cent?

Mr. Boutelle. It seems to me that is immaterial. I will
2037 interpose an objection there.

A. It would certainly have been inexpedient and unwise financiering.

Q. Was not the plan adopted one which gave to every common stock holder an equal right to participate in the benefit of the retirement?

A. It did.

Q. Did any of the underwriters or the Standard Trust Company have any right or benefit that was not open equally ratably to every common holder of stock?

A. They did not, sir.

2038 Q. And the holder of even 100 shares of common stock could have gotten his proportion of that benefit equally ratably with J. P. Morgan & Co., or any underwriter?

A. Absolutely.

Q. And if he did not choose to put it in it was because he saw some way of making his stock more valuable, or else because he didn't know of his opportunity.

Mr. Boutelle. Good testimony.

2039

Q. Is that it?

A. I should assume so.

Q. Has the whole $75,000,000 been paid in?

A. The whole $75,000,000 for convertible certificates?

Q. Yes.

A. Yes, sir; it has.

Q. Was there any profit upon or resulting to the underwriters or the Standard Trust Company except such profit as they might have the chance of making off from new common stock which the old common stock holders might take and decline to take?

2040

A. They had no chance of any profit except in taking the convertible certificates which some old common stock holders might decline to take, and either selling those or converting them into common stock and keeping them.

Q. So there was no arrangement for profit that was not publicly disclosed and open to every common stock holder ratably?

A. Absolutely none. If the common stockholders availed themselves of their entire privilege there would have been no profit of any kind to the Standard Trust Company or underwriters.

2041

Q. And that was offered to every common stockholder?

A. Yes, sir.

Q. And availed of by most of them?

A. Oh, I think almost all—very little of it—didn't take it.

Q. Do you know how much common stock failed to avail of it?

A. I think there was about $200,000 or $300,000 of the certificates which were not taken by the common stockholders.

Q. That would be about 2,000 shares of the common stock?

A. Yes.

Q. Of which we know of the existence of about a hundred? 2042

A. I don't know of the existence of any of it.

Mr. Bulkley. You are not well informed.

A. Oh, I forget that hundred.

By Mr. Boutelle:

Q. Was any offer made to the preferred stockholders to issue common for their preferred stock on an even exchange?

A. None whatever, sir.

2043 Q. How much more difficult would it have been, as we are getting into hypothetical states of facts, to have offered that to the preferred stockholders than it was to carry out this somewhat complicated scheme that you devised?

A. I couldn't answer the first part of your question. As to the second, I don't think it was complicated.

Q. As a matter of fact you did not attempt in any way, shape, or manner to offer to retire the preferred stock by substituting with the preferred stockholders an issue of common stock at par?

2044 A. No, sir.

Q. Mr. Steele, during the time you have testified that Mr. Morgan was absent on the Continent, was your office constantly in communication with him by cable?

A. Frequently; a good part of the time.

(From U. S. vs. No. Sec. Co., Vol. 1, pp. 312-367.)

J. PIERPONT MORGAN, after being first duly sworn, testi-
2045 fied as follows in answer to questions by Mr. Lamb:

Q. Mr. Morgan, you are engaged in business in the City of New York under the firm name of J. P. Morgan & Co.?

A. Yes, sir; I am.

Q. And you are the senior member of that firm?

A. Yes, sir.

Q. And no transaction of any magnitude could take place without your approval?

A. I am not prepared to say that. If I am not here I don't attend to it.

2046 Q. We have the cable and lately the wireless telegraph.

A. I mean to say——

Q. Generally speaking?

A. Yes.

Q. No transaction of any great magnitude would take place without consulting with you?

A. I shouldn't think so. It would be perfectly satisfactory to me if they did.

Q. J. P. Morgan & Co. do business in other cities, do they not, abroad? 2047

A. They have transactions with houses abroad; yes.

Q. But these houses abroad, in other cities, are in direct communication with J. P. Morgan & Co.?

A. Direct correspondents, yes.

Q. But not necessarily?

A. The house in Philadelphia and the house here are the same. These two houses are identical. The other houses are correspondents.

Q. And the house in London in which your name appears? 2048

A. I am a partner in that house.

Q. But that has nothing to do with the house here?

A. Nothing to do with the house here.

Q. Now, Mr. Morgan, you have been familiar, of course, with the northwestern railroad situation for a great many years?

A. I have.

Q. With all of the roads, their financial status and physical condition, and matters pertaining to them for a great many years?

A. Yes; up to a certain point. I don't pretend to keep the 2049 run of all the roads except those with which I have direct communication.

Q. Well, for instance, you have been for many years thoroughly familiar with all matters pertaining to the Great Northern Railroad Company?

A. No, sir.

Q. Or the Northern Pacific?

A. The Northern Pacific, yes.

Q. And in a general way, of course, as a well-informed man in financial affairs, you have information of the conditions relating to the Great Northern? 2050

A. Not particularly; no.

Q. You have never had any occasion to study its physical condition?

A. I have done that.

Q. And its finances—have you known anything about them?

A. I have kept no record of those at all.

2051 Q. And of the Union Pacific—have you paid any attention to their matters?

A. Not any of the details; no.

Q. No. But as a banker, for instance, you understand, whose duty it would be to keep himself informed?

A. I try to.

Q. And of the Chicago, Burlington and Quincy?

A. Also.

Q. You would know all that you could about that?

A. All that I could or had the time to do.

2052 Q. Would you mind telling us what the nature of the business of J. P. Morgan & Co., of this city, is?

A. They do any financial business that is creditable and which comes to them in the shape that can be transacted.

Q. You mean that they deal in railroad and other securities for customers?

A. Yes.

Q. Do they engage in any speculative enterprises for their own account?

A. Not to any extent; no, sir. On the contrary, we carefully avoid them.

2053 Q. They would not, for instance, purchase 78,000,000 of a stock of a railroad on their own account?

A. They would if they wanted to.

Q. They would not as a rule?

A. I don't know that; I could not tell you that.

Q. That would not be the general policy of the house?

A. I am not prepared to say that, even.

Q. Their business is dealing in stocks and securities, largely for the benefit of customers?

A. Yes.

Q. And then of financing any good enterprises that may 2054 present themselves and be requested?

A. If they wished to do so.

Q. Yes; of course; and they would, for instance, furnish money for that purpose; loan it?

A. Yes.

Q. For their own account and for the account of others?

A. Yes.

Q. You were a member of the voting trust committee of the 2055
Northern Pacific, were you not, Mr. Morgan?

A. I was.

Q. And you had to do very largely with the reorganization of the Northern Pacific?

A. We had the absolute control of the organization.

Q. The absolute control?

A. Yes.

Q. That was in 1896?

A. Yes, sir.

Q. Now, previous to that time, had you had to do with the 2056
finance of the Northern Pacific?

A. Yes.

Q. You had not been a director?

A. I was a director at one time; yes.

Q. When was that?

A. I could not remember the exact year; it was back in 1891 or 1892; along there, I suppose.

Q. But you had absolute charge of the reorganization of the Northern Pacific?

A. Absolutely.

Q. And may I ask you to give us a very brief outline of that 2057
reorganization—what the bonds of the new company were issued against, and the preferred stock and common stock?

A. In order to do that I should have to give you the plan of reorganization. I have not one with me. I could not tell you to save my life. I couldn't go into the details of that matter.

Q. Not in such a tremendous transaction?

Mr. Stetson. He cannot remember the whole of it.

Q. Just those three things, what the bonds were issued against?

A. If you will allow me, I will put in, as an answer to that, the plan of reorganization, which gives all the details. 2058

Mr. Boutelle. That is all right.

A. That is a matter of record, and I will produce that if you wish it.

Mr. Boutelle. That is all in print, Mr. Lamb.

Q. Are you a director of any railroads, Mr. Morgan?

A. I would be very glad to have it put in; I think it is desirable that it should be put in.

2059 (It was stipulated that the plan of reorganization should be marked by the special examiner as "Complainant's Exhibit N," when furnished by the witness.)

Q. You know Mr. James J. Hill, of course?

A. I do, sir.

Q. And is it in your recollection that at the time of the reorganization there was sold to Mr. Hill and his friends $26,000,000 par value in stock of the Northern Pacific, or about that amount?

A. The exact amount I could not tell you.

2060 Q. About what amount?

A. It was quite a block of it.

Q. About $26,000,000?

A. I couldn't say, sir.

Q. I mention that to you because that is the amount Mr. Hill testified to.

A. I have no doubt whatever he said was correct.

Q. Who conducted that negotiation for that large amount of money, Mr. Morgan?

A. I did.

Q. With whom?

2061 A. With Mr. Hill.

Q. With Mr. Hill directly?

A. Yes, sir.

Q. Did you meet any of the associates of Mr. Hill?

A. Yes.

Q. The men that he refers to?

A. What?

Q. You know the different original Great Northern stockholders, Lord Strathcona and his friends?

A. I met Lord Mount Stephen. I saw him at that time and I saw Mr. Kennedy.

2062 Q. So the parties who purchased that great block of stock of the Northern Pacific were all Great Northern stockholders, were they not?

A. I don't know.

Q. Well, Mr. Hill was?

A. Mr. Hill was.

Q. And did Mr. Hill say to you who his associates were?

A. All of them? No.

2063

Q. Some of them?

A. I don't remember that he did.

Q. Can you tell us anyone that he named as an associate?

A. Well, I don't remember the details of the conversations that may have occurred at that time.

Q. Well, it was a very great transaction?

A. I don't think so; it didn't seem very much to me.

Q. $26,000,000?

A. It was not twenty-six millions of money; twenty-six millions of par value were sold at $16. I don't think it came to that.

2064

Q. It was sold at $16 a share?

A. Whatever it was sold at. I don't remember the exact figure, but it was a low price, because at that time the stock was of very little value. I mean the market value when I say value.

Q. So that Mr. Hill, the president of the Great Northern, conducted those negotiations with you for the purchase of this Northern Pacific stock and consummated them?

A. He did.

Q. And what was the consideration of that purchase?

2065

A. The money.

Q. Do you remember how much money?

A. I have not the data here with me. I will give it to you with great pleasure.

Q. Will you give it to us? Thank you.

Mr. Stetson. We will have that stipulated, shall we, that the amount of cash paid for the purchase of Northern Pacific stock in 1896, amounting approximately to $26,000,000, shall be furnished?

A. I said approximately; whatever it was. Whatever it was—the transaction.

2066

Mr. Stetson. Whatever the amount was. If you want to know what amount was sold and the price?

Mr. Lamb. Yes.

Mr. Stetson. There is no use finding one without finding the other.

Q. Did you or your firm purchase any Northern Pacific common at that time?

A. I think it is very likely.

2067 Q. Do you think it is very likely that you bought a large block?

A. I do not.

Q. Your relations as a banker, I mean. Of course, the relations of your firm have continued with the Northern Pacific from 1896, have they not?

A. They have. We have been their fiscal agents.

Q. Now, to save time, would you mind telling us what that term means; what you did for them?

A. Whatever they required in a financial way came under
2068 our charge.

Q. Do you mean to say that all their financial business was conducted through your house?

A. Not all of it, but we are their New York representatives.

Q. Oh, you are their New York representatives of the Northern Pacific?

A. Of the Northern Pacific, and are to-day.

Q. So that if the Northern Pacific issued any new securities since that time it would be financed through your house?

A. It would.

Q. And if it was necessary to raise money for the building of
2069 extensions and improvements or for the purpose of branch lines, that transaction, or those transactions, would probably be financed from your house?

A. I should expect them to be.

Q. Of course, the detail of the financial matters of the railroad would be handled by themselves?

A. Of course.

Q. But all these larger matters would be handled by your house?

A. They would. At least, I should so expect them to be.

Q. Was any member of your firm detailed to look specially
2070 after the finances of the Northern Pacific?

A. In the house itself?

Q. Yes.

A. No, sir.

NOTE.—The amount of common stock sold to J. J. Hill and Lord Mount Stephen February, 1897, was 258,341 shares, at $16 per share, making $4,133,456.

Q. It was a matter that came generally under the attention 2071
of any——

A. Of any partner who at the time happened to be running the machine.

Q. I suppose that during that period you have loaned the Northern Pacific large sums of money?

A. At times; yes.

Q. Or obtained large loans for them. Now, have those loans been——

Mr. Stetson. You have no answer to that.

Q. Those loans, then, were generally for the account of 2072
your house and not for others?

A. I could not tell you that. The transactions have been made; that is all.

Q. Well, I take it as a matter of course, that since that time it was necessary to raise large loans, and I am simply asking whether the house of J. P. Morgan & Co. did it for their own account, or whether it was for the account of others.

A. I don't feel called upon to answer that question. We have negotiated other loans.

Q. I didn't ask that.

A. You asked me for whose account they were made. I 2073
cannot tell you that, of course. We have been the fiscal agents and have raised the money wherever we could get it.

Q. Sometimes you have loaned it yourself and sometimes obtained it for them?

A. We have formed syndicates to raise it for them.

Q. And the Northern Pacific has, of course, paid from time to time for those services?

A. I suppose so.

Q. I suppose each time that an underwriting syndicate is formed there is a commission paid to the banker, and there is 2074
some profit to the underwriter?

A. Not always.

Q. Not always, but generally. Usually that would be the case, would it not?

A. We should expect it to be; otherwise the transaction would not be made.

Q. You would expect as bankers, of course, to have a railroad company pay you a regular sum for your services?

2075 A. Not always; no.

Q. Do you mean to say that when you negotiate a loan for a railroad you don't make the railroad pay your house for its work?

A. Not always.

Q. You do it sometimes without a consideration?

A. We do.

Q. Can you explain that, Mr. Morgan?

A. Certainly; because it may not be desirable to make a charge. It depends upon the character of the transaction. In a great many cases no charge whatever is made.

2076 Q. So that you do that work for nothing?

A. Do that work for nothing.

Q. In the matter of purchasing branch lines, or completing extensions, who would generally negotiate or usually negotiate for the Northern Pacific those purchases?

A. The company.

Q. The company directly?

A. Certainly.

Q. Not through your house?

A. No, sir.

2077 Q. And do you know what special officer of the company would have that matter in charge?

A. That depends upon the by-laws.

Q. I thought perhaps you might know of your own personal knowledge.

A. I have not been a director of the Northern Pacific since it was reorganized.

Q. No; but you have had a very thorough and clean knowledge of its affairs?

A. I have got a natural inference, but I have no knowledge. If you ask for my knowledge, I say no; I do not know any-

2078 thing about it.

Q. Have you taken a great interest in the road?

A. A great deal.

Q. Since the time you reorganized it?

A. I have.

Q. And you would take special care to know just how its business was being conducted?

A. I should not. I should know probably the result and the

policy, but I have never attempted to follow the details of all 2079
the transactions. I should have time for nothing else if I did.

Q. I don't speak of the details, Mr. Morgan.

A. I have told you, Mr. Lamb, that I have known the policy of the Northern Pacific.

Q. In a general way?

A. In a general way, and I don't think that any large transaction would be made without my knowledge, but there is nobody under obligations to keep me advised. If they made transactions without my knowledge, I should think they had a perfect right to do so. 2080

Q. But they wouldn't naturally do so?

A. I don't know. I am not prepared to say that. I think I have answered that question.

Q. What has been the general policy of the road since 1896? Has it not been to conduct its affairs as an independent organization; that is, from 1896 to prior to 1901?

A. Up to date I would say it has.

Q. And it has never formed any alliance with any other trunk line?

A. In what way? 2081

Q. Or any other railroad?

A. What kind of alliance, sir?

Q. Any kind of alliance.

A. That is a pretty broad term. I don't understand that. You mean——

Q. I mean it has been conducted as an absolutely independent organization?

A. It has, to my knowledge.

Q. And has entered into no alliance with other roads?

A. I don't know.

Q. That is, for instance, an alliance covering rates and rail- 2082
road rates?

A. I should not think so. I don't know.

Q. You do not think it has?

A. That I don't know anything about—about rates.

Q. But it has not been the policy of the road to enter into alliances—that is, from 1896 to the 1st of January, 1901—for the division of traffic with other railroads?

A. That I know nothing about.

2083 Q. To your knowledge, Mr. Morgan—and, of course, I think you have a very thorough knowledge of the affairs of the company—has its stock from 1896 to the first of 1901, ever been controlled by any other organization?

A. Never.

Q. Any other railroad, or otherwise?

A. No; none.

Q. So that its policy from 1896 to 1901 was to pursue an absolutely independent course?

A. Absolutely.

2084 Q. And to operate its affairs without reference to any other railroad?

A. Absolutely.

Q. Since you reorganized the company its affairs have been very prosperous, have they not?

A. They have.

Q. It has paid dividends right along?

A. How can I answer that?

Q. Of course we know that it has.

A. Then what is the use of asking the question?

Q. I mean to say——

2085 A. That is all right. I will answer any question, Mr. Lamb.

Q. Simply to get them on the record?

A. I could not answer that because I should tell you I don't know when they paid their dividends.

Q. You do know that the market value of its securities have steadily advanced in public favor?

A. They have.

Q. Since the reorganization?

A. Ever since then.

Q. They have steadily gone upward?

A. With some few reactions.

2086 Q. The Great Northern Railway Company is a competitor in many respects with your Northern Pacific, is it not?

A. To a certain extent, yes.

Q. And there is, as I know, and as you know, and we all know, pretty sharp competition sometimes at some places?

Mr. Stetson. If you know, what is the use of asking him?

Mr. Lamb. I want it on the record.

Mr. Stetson. Then ask him the question instead of making your confession of faith. 2087

Q. I will put the question over again. Is there not at various points sharp competition or has there not been for traffic between the Great Northern and the Northern Pacific?

A. I should say yes. I cannot imagine anywhere where it would be greater than it is there to-day.

Q. And the Great Northern Railroad Company, from the period since you reorganized the Northern Pacific, has several times increased its capital stock, has it not?

A. I don't know. 2088

Q. Do you know in a general way how prosperous the Great Northern has been in recent years?

A. From common reports I should consider it very prosperous. I have already said to you the details of the Great Northern I know nothing about.

Q. Not the details, but in a general way?

A. I told you from common reports I should consider it had been.

Q. You don't know about the great increases in their capital stock?

A. I don't know. I have no doubt that they have been made; but when you ask for my knowledge, I know nothing. 2089

Q. When was it first decided to dissolve the voting trust of the Northern Pacific?

A. I think in October, 1900.

Q. Why was that decided, Mr. Morgan?

A. Because I came to the conclusion that the condition of the company was such that it could be safely turned over to the stockholders, and for the reason that I thought the time was approaching when it would be desirable to retire the preferred stock, and I preferred that that question should come up before the stockholders then rather than the voting trustees, and that was one of the leading reasons which induced me. 2090

Q. Was the question of retiring the preferred stock ever submitted to the stockholders?

A. No; but I mean that they should act upon it—that the voting trustees as such, if you will allow me to explain to you——

2091 Q. Yes, do.

A. I will explain how that came up; the retiring of the preferred stock, of course, was in the hands of the directors, but those directors were elected by the voting trustees. There was an election in October, 1901, to elect directors. I preferred that that election should take place by the stockholders themselves, rather than simply by the voting trustees voting.

Q. So that the responsibility for the retiring of the preferred stock should fall upon the stockholders?

2092 A. No; so that the directors who should decide that question should be the nominees of the holders of the stock themselves and not of the voting trustees.

Q. Didn't you think, carry out your thought, there, that the stockholders should themselves decide that it might have been well to submit the question to the stockholders as a whole?

A. Decidedly not, and if you wish me to I will go on and tell you why.

Q. No; never mind.

Mr. Kellogg. We will ask you why, if they do not wish it.

2093 I think it would be more convenient to take it now.

Q. Very well, Mr. Morgan, will you explain why the question of retiring the preferred stock of the Northern Pacific was not submitted to the stockholders?

A. No; that is another question. Because the directors had the power, that was the reason. I will tell you—you asked me the question before and I would like to answer that question, but this question is a different matter. The directors had the absolute power to retire the preferred stock. Consequently it is not for me to say whether they could have done it or not.

2094 Q. Answer it in your own way, Mr. Morgan.

A. No; I won't. Ask me the question to suit you. If you will ask me to tell you why I didn't, I will explain to you the reasons for my decision, why the thing should have been done by the directors and not the stockholders, and the situation. I will do it in a few words, if you wish that statement.

Q. Certainly, we would like to hear it.

A. When the Northern Pacific was reorganized the times 2095
were very bad and the indebtedness of the Northern Pacific—
of the old company—was very large. It was not possible—it
was not desirable—it was not desirable and I don't think it
would have been possible at that time, with the credit of the
Northern Pacific in the market, or the public opinion of the
value of the property, to get a syndicate up large enough to
raise an almost indefinite amount of money. At the same time
provision had to be made to take up bonds and stock of the old
company under the reorganization. Consequently, in making
up the plan Mr. Coster and myself, together with Mr. Stetson, 2096
who advised us on the legal points of the question, decided
this point—that if we could issue a preferred stock which
would be a temporary security upon which we would not have
to pay interest unless the road earned it, and which at any
time we could retire if we wished to, that that would be a safe
transaction, and that plan was decided upon and such a secur-
ity was issued in the shape of the preferred stock. That pre-
ferred stock, as you will see by the plan of reorganization
which I have agreed to submit to you, was used to take up
obligations in the shape of bonds, notes, and old debts of the
original Northern Pacific Company, and it was successful, and 2097
from the day that that plan of reorganization was issued we
never had one moment's doubt that within a very few years
and before the expiration of the time fixed for the voting trust,
that the common stock would have reached a point in its price
where it could be sold at par or better and the preferred stock
retired, which restricted not only the income of the property,
but also restricted certain lands which were set aside and
upon which the preferred stock was, to a certain extent, a lien.
Consequently, it was always considered and always known by
everybody connected with the Northern Pacific that the
amount of preferred stock which was outstanding was simply 2098
a temporary loan until we should issue the common stock at
par and take it up, and consequently, in dealing with the ques-
tion, the question simply was when the directors of the North-
ern Pacific should decide that it was expedient to do it.

Q. Then it became necessary to raise a great deal of money to retire this preferred stock?

A. It did.

2099 Q. And did your house provide that money?

A. We did not. The stock was offered to the stockholders—the common stock holders. The new common stock for an amount sufficient to pay off that preferred stock was issued to the common stock holders.

Q. Did you, as fiscal agent, manage it?

A. We financed the transaction.

Q. And you at that time—your house and Mr. Hill—were such large holders of common stock that practically the taking of a majority of this new common stock fell upon you and Mr.
2100 Hill?

A. And the other stockholders, whoever they were.

Q. The other minority stockholders?

A. The stockholders—whoever the stockholders were of record—took them up; at least, they took convertible bonds which were convertible into stock.

Mr. Boutelle. Convertible certificates?

A. Yes; convertible certificates.

Q. And this $75,000,000 was raised in cash?

A. It was.

Q. Now, were there a large number of stockholders of the
2101 Northern Pacific at that time?

A. Quite a number; yes.

Q. How many would you think?

A. Oh, I couldn't tell you that.

Q. I mean just roughly.

A. I couldn't tell you to save my life.

Q. Is it not a fact that most of the stock was held in very large blocks?

A. Yes; in large amounts.

Q. In very large amounts?

A. The transfer books of the company will show you exactly
2102 how it was.

Q. I would like to see them.

A. I say there is a record of the list of the stockholders. I suppose you have got the power to get it. I don't know.

Q. Well, they usually try to obstruct us——

Mr. Stetson. Hawe you had any obstruction here, in this case?

Mr. Lamb. No; I don't think we have, Mr. Stetson. 2103

The Witness. Then I don't think it is fair to make that remark.

Q. I wish to explain that. That was a side remark, speaking generally.

A. That goes on record. I try to give you everything that I can. I don't think a statement of that kind is right or fair.

Q. Strike it all out. I must say we have been met with unexpected frankness in this matter.

A. There is nothing under heaven connected with the transaction that I know of that I won't tell you, and I will tell you 2104 how to get the rest.

Q. For managing that transaction, of course the Northern Pacific paid your house?

A. They paid nothing whatever. That is one of the transactions I spoke of a little while ago, it just occurs to me, where things had to be done for nothing.

Q. What time was that, Mr. Morgan? Can you recall the date?

A. The stock was paid on the 1st of January, 1902.

Mr. Stetson. We know that.

A. Owing to the peculiarities of the law of the State of 2105 New York, we were obliged to have the money ready on January 1. It was a legal holiday.

Q. And it was decided to pay that off when?

A. I don't know. By the directors at their meeting, whenever it was.

Mr. Stetson. The 13th of November.

Q. That is the same day that the Northern Securities Company was organized, was it not?

A. I don't know. I think the record will show that. It was a busy day, I know.

Q. I don't doubt it. Well, you gave, under that plan of 2106 issuing convertible certificates, privilege to the common stock holders of the Northern Pacific to acquire this new common stock?

A. To acquire the convertible certificates; yes.

Q. Convertible at the option of the company into common stock?

A. After the 1st of January.

2107 Mr. Stetson. Convertible at the option of the company at any time, and by the holder, after the 1st of January.

Q. Yes; that is right. Now, as your house was a very large holder of common stock at that time, that privilege was really one that you conferred upon yourself, to a great extent, was it not?

A. We didn't confer it upon anybody.

Q. Who did?

A. The Northern Pacific Railway Company.

Q. But then you managed its affairs?

2108 A. No, sir; I beg your pardon, the board of directors managed its affairs.

Q. And Mr. Hill, of course, being a large holder of common stock, received great benefits under that?

A. Every stockholder received it.

Q. Mr. Morgan, when did you first hear of the proceeding or negotiation to purchase the entire capital stock, or endeavor to do so, of the Burlington by the Northern Pacific?

A. When it was first started.

Q. When was that?

A. That I cannot tell you. I haven't any memorandum here
2109 to give you the date. Some time last summer, or before that —long before that—before I went to Europe. I went to Europe the end of March, and it was before that.

Q. Who first suggested that to you, Mr. Morgan?

A. If you will allow me to state you the history of that in my own words, I will tell you the transaction from beginning to end.

Q. Yes.

A. I think it was fully two years ago, or more—time has flown on since then. I think it was in 1899; it may have been 1898. I made up my mind that it was essential that the
2110 Northern Pacific Railroad Company—railway, or whatever you call it—what is it?

Mr. Stetson. Railway.

Witness (continuing). Railway should have its eastern terminus practically in Chicago, and in the same manner that the New York Central, of which I am a director, at that time, or soon after, decided the same thing with regard to their line, that the western terminus of their line should be in Chicago,

practically by acquiring the Lake Shore; in other words, that 2111
the transcontinental line should come to Chicago, and that eastern line should go to Chicago, so that was to be the central point, and I talked it over with a great many people interested in the Northern Pacific, and I found they all agreed with me, and the question came up as to how it could best be done. Of course, we were confronted with the question which is always arising and repeats itself, as to whether a line that you want is an independent line or whether it is a competing, and—what is the other term?

Mr. Stetson. Parallel.

Witness (continuing). Parallel and competing line, and 2112
from a study of the case I came to the conclusion that there were but three lines available. In other words, there was the St. Paul, there was the Chicago, Burlington and Quincy, and there was the Wisconsin Central. Of course we would not have taken the last one anyway. That was not the question involved. Consequently we came down to the question of the St. Paul. I made up my mind that of the two I would rather have the St. Paul. Soon after that I met Mr. Hill, and I said: "Mr. Hill, I think that the best thing that we can do—I think your line perhaps is in the same condition—I think we had better go to work and secure the St. Paul road, or a road to 2113
Chicago, and if you will share with us we will do it together," and he said: "All right." So he said: "Who would take it up?" I said: "I will; I think we had better take the St. Paul." He said he thought we had better take the Burlington. I said I would rather have the St. Paul, because the financial responsibility to take the St. Paul would be less. He did not agree with me, but he acquiesced in my decision, and we discussed that question. I took up negotiations, not in any secret manner—we went directly to the directors of the road and told them what we wanted. We found some of them disposed 2114
to make the transaction. Others were not. Well, right here I will tell you what my reasons were for taking the St. Paul in preference to the Burlington. Mr. Hill's opinion—I will give you what I understood to be his opinion—and that was that the Burlington system offered a better market for the coarse freight we were hauling from the Pacific coast for

2115 distribution than the St. Paul, and he wanted the Burlington because he thought that would have been open for the freight from the Pacific to greater advantage than the St. Paul. However, as I say, he acquiesced in my decision. Those negotiations, as I said, went on for some time, and, finally, the directors of the St. Paul asked me for a conference, and then they told me very frankly that they had decided they would not let us have the road on any terms. They would not even name terms. I could not have it in that way; and being unwilling I didn't attempt to buy stock in any way, shape, or manner. I said: "Well, we will abandon the transaction." Then I went
2116 to Mr. Hill and told him: "You can go ahead and see what you can do with the Burlington;" and he took up negotiations with the Burlington, which were carried through successfully. That is the whole story.

Q. When did these negotiations for the purchase of the St. Paul commence?

A. I don't keep a journal of all these dates. It is a question of common knowledge—it was not done in secret—it was a question that was going on for months and perfectly well known. Every paper in New York published every day how
2117 it stood.

Q. You know sometimes they are right——

Mr. Stetson. This was about the date published in the daily press, was it not?

A. It was in October, 1899.

Mr. Boutelle. What I was asking about was in reference to the time when the negotiations with the St. Paul fell through and when he directed Mr. Hill to start in on the Burlington, approximately.

A. Perhaps someone can tell me here. Do you know, Mr. Clough?

2118 Mr. Steele. It was the first of 1901 or last of 1900.

Mr. Clough. It was a little after the middle of March when the negotiations began, and the circular of the Burlington committee was sent out on the 27th of April, requiring the stock to be deposited by May 20.

A. But the transaction was practically closed; that is, it was understood to be closed before I went to Europe in March.

Mr. Stetson. Yes; it was. That is what I say. It was the 2119
15th of March.

Mr. Steele. It began a few weeks before that.

Mr. Boutelle. That one transaction followed the other?

A. They did absolutely.

Mr. Stetson. The termination of the St. Paul matter was in December, 1900, and the other was taken right up, and was practically concluded in March, 1901. Is that about right, Mr. Morgan?

A. I should think so. As you will see, I—allow me to say—you will see from that that that transaction was done for a 2120
specific object—to get to Chicago. It was a transaction made independent of everybody and everything. It was simply an understanding and a desire on the part of Mr. Hill and myself. Take the Atchison road, for instance: All these roads seem to center in Chicago. It was the desire that the Northern Pacific on my part, and the Great Northern on his, should terminate there; that is, practically, that the two roads should end in Chicago. It was a transaction entirely independent of all other transactions that you may have in mind or anything of the kind. It was a perfectly independent transaction, and it was done to attack nobody or to do anything. It was simply 2121
to bring those two Northern lines to Chicago.

Q. And so negotiations for the purchase of the St. Paul were solely with Mr. Hill?

A. No, no; what do you mean? I didn't have any negotiations with Mr. Hill. Mr. Hill simply agreed if we took the St. Paul, we would take it together.

Q. And then you negotiated with the directors of the St. Paul?

A. With the directors of the St. Paul road.

Q. And made no attempt whatever to purchase any stock in 2122
the market?

A. I don't think we bought a share. I want to say to you gentlemen that when J. P. Morgan & Co. are acting in a fiduciary capacity they are not speculating in the stock market.

Q. We all believe that, Mr. Morgan.

A. You asked me a question a little while ago and I want to say that——

2123 Q. It did not occur to me to ask that question as a breach, or even indicating a breach of a fiduciary trust, but as an actual thing, that interests desiring to control would go into the market and purchase every share of the stock they could before they began negotiations.

A. That is not our way of doing business.

Q. I only wanted you to understand my motive.

A. I understand; I am quite satisfied with your question, Mr. Lamb.

Q. And the negotiations for the purchase of the Burlington, were they made by Mr. Hill or your house?

2124 A. Exclusively by Mr. Hill, except such influence as we could bring to bear on people who were interested in the Burlington, believing that it was the thing to do. But as to the negotiations—when I say negotiations I mean the man that sits down and is responsible to me and to everybody else in regard to the situation, the same as I was with the St. Paul—they were made by Mr. Hill.

Q. Who negotiated with the directors?

A. Mr. Hill negotiated with the directors for the purchase of the Burlington road.

2125 Q. Mr. Morgan, you say the price of $200 a share for the Burlington was determined between Mr. Hill and the directors of the Burlington road? I mean that in view of the fact that its market price had for so many years been and was then so much less.

A. Yes, sir; we simply couldn't get it any cheaper.

Q. You had nothing to do with fixing the price?

A. We agreed to pay it.

Q. Mr. Hill fixed the price?

A. No; the Burlington directors fixed the price.

Q. And you agreed to pay that price?

2126 A. When Mr. Hill said we must pay $200 a share, I said certainly, pay it.

Q. Have you any knowledge of the basis of value on which that amount was determined, or was it simply because that was the only price at which it could be bought?

A. It was the only price at which it could be bought, and we had great difficulty getting it at that, and, in the next place, I felt, and Mr. Hill must have felt also—because he is not in

the habit of making transactions he don't think are profitable 2127
—that it was worth a great deal more than that for the purpose for which we wanted it, and it would pay a large profit. He thought it would pay both the Northern Pacific and Great Northern a profit on that price.

Q. Yes; for the purpose for which you wanted it.

A. No; I say it would pay a profit in itself.

Q. Do you mean in operating?

A. In operating it; yes, sir.

Mr. Stetson. You put it both ways.

A. I say both ways. 2128

Q. Up to that time the traffic of the Burlington had been shared by both roads, had it not—by the Northern Pacific and Great Northern?

A. Not to any great extent; perhaps somewhat.

Q. Those were connecting lines?

A. I want to say to you right here when you come to questions of traffic you are dealing with questions I know nothing about.

Q. I am speaking of the general question.

A. I cannot answer questions on that subject, because I know nothing about them. 2129

Q. Do you not know that the Northern Pacific was competing with the Great Northern for the business of the Burlington?

A. Not that I ever knew of, no; no more than they do for everything.

Q. Yes; engaged in general competition?

A. I never knew two roads yet that didn't compete.

Q. But now they operate the road jointly?

A. No; not at all.

Q. They own it? 2130

A. The road is operated independently to-day.

Q. But they own it—the two roads own it?

A. What?

Q. Of course——

A. The Burlington road to-day is worked as independently as any other road in the United States, in my opinion.

Q. But its entire revenue goes to its owners, of course?

A. Naturally, all roads do.

2131 Q. Couldn't the Burlington have been purchased by the Northern Pacific alone?

A. Undoubtedly.

Q. Wouldn't that have been a better transaction for the Northern Pacific to a certain extent?

A. Yes. The reason we didn't was that the amount of two hundred odd million dollars—I don't think that the Northern Pacific cared to take all that obligation, when they could get the Great Northern to assume half of it.

Q. Have you ever read the trust indenture, Mr. Morgan,
2132 relating to the issuance of those bonds?

A. No, sir.

Mr. Stetson. You mean the joint bonds of the Great Northern and Northern Pacific?

Mr. Lamb. Yes.

Q. Are you aware of the condition existing therein whereby, in the event of the failure of the Northern Pacific to pay interest, the entire stock of the Burlington would become the property of the Great Northern?

A. And vice versa.

Q. Yes.

2133 A. Of course, that is always the case, I suppose, if a person has joint collateral. If one partner has to pay all the debt he takes the collateral.

Q. So that one man or one interest dominating both roads might wreck one at the expense of the other?

A. I beg your pardon. It would be absolutely impossible.

Q. In the event of a dispute, Mr. Morgan, between these two roads, the Great Northern and the Northern Pacific, as to matters relating to the Burlington, it would be arbitrated, I suppose?

A. The trust indenture says that, doesn't it? Mr. Steele can
2134 tell you better than I can. I am not up on that question.

Q. Now, I suppose, the fact that these roads through their directors entered into a transaction for the purchase of the Burlington tended to bring them together a little and to enhance the friendly relations between the directors?

A. I don't think so, not necessarily.

Q. No; but they met frequently, of course?

A. No; they didn't meet.

Q. I understand that shortly after that the Northern Se- 2135
curities Company was organized?

A. The Northern Securities Company was not organized for six months or more after that.

Q. In November, and the trust indenture was in July?

A. No; this was in November previous, the year before. The negotiations with the St. Paul were certainly a year before, more than a year before the Northern Securities Company was ever thought of. So far as the Northern Pacific Company was concerned nobody thought of the Northern Securities Company at that time, or dreamed of it. 2136

Q. When did you first hear of the Northern Securities Company, Mr. Morgan?

A. Just a few days before it was organized.

Q. You hadn't been consulted about it previous to that time?

A. In what way, about the Northern Securities Company?

Q. Yes; about the advisability of forming such a company.

A. No; do you want me to tell you about the Northern Securities Company? Have you got through with the Burlington? I mean let us finish one. Don't you think it would be as well to finish one thing? There is no connection between 2137
them; consequently I would prefer it.

Q. Yes, I know.

A. I don't want to convey the impression there is any connection between the two, because there is no more connection between the Burlington and the Northern Securities Company than there is between New York and Kamchatka. I would like to finish one subject before I take up the other, if it is agreeable to you; that is all.

Q. Did Mr. Hill ever consult you about the danger of some other interests buying in the Burlington? 2138

A. No; not that I know of.

Q. Or to your knowledge—any member of your firm?

A. Not that I know of.

Q. Or anybody representing Mr. Hill?

A. I don't know that I have any recollection or any knowledge of it.

Q. It never came to your knowledge that Mr. Harriman, or

2139 the Union Pacific, or the Oregon Short Line had at one time attempted to buy the Burlington?

A. Oh, a long time before.

Q. But at this time, or about this time, you had not been consulted by Mr. Hill?

A. I was consulted by Mr. Hill about buying the Burlington.

Q. I mean about the danger of Harriman or his interests, the Union Pacific or the Oregon Short Line?

A. That went without saying. We kept very quiet as long as we could, on account of buying the Burlington, because we
2140 knew perfectly well what the possibility was—if somebody wants a thing another man wants it, too.

Q. Did you know at that time that these rival interests had a great deal of the stock, or were attempting to buy it?

A. At that time, no.

Q. Or shortly before, or about that time?

A. Oh, no; it must have been a year or so before that. I don't remember the date. But it was a common story at one time. In fact, I would like to point out to you that for months at that time, nearly every day, somebody was negotiating for some line or buying, or trying to buy, a railroad.

2141 Q. I remember the time.

A. I say you remember the time I am speaking about, and I think we bought every road in the United States, within a few days, at one time.

Q. I was asking simply on the basis of a statement made by Mr. Hill, that the purchase of the Burlington was presented rather by the fact that the other people were trying to get it.

A. I have no doubt myself. You asked my opinion of it. If we had been the sole buyers we probably could have bought it cheaper; that was not the question. The question was that you could buy it. There was no attempt on our part—there
2142 was no connection between that purchase and any views of any other road, or of any man, woman, or child living. I have told you the exact facts of that transaction from beginning to end, as I know them.

Q. Just to summarize the Burlington matter, Mr. Morgan, Mr. Hill conducted the negotiations with the Burlington people?

A. Yes.

Q. With the directors? Then he submitted the plan to you, 2143
and you approved it?

A. Yes; that is, he submitted this question to me: Shall we take the Burlington at $200 a share, payable in 4 per cent bonds? We had already decided, you know, before that, if we couldn't get the St. Paul we would try for the Burlington. I was consulted a long time before on the general principle, not with regard to what we would have to pay for it, but when it came down to the question—the question submitted to me simply was: Shall we pay $200 a share, payable in 4 per cent bonds, and my opinion was decidedly yes. I told Mr. Hill that, 2144
and that being the case there was a tacit understanding that the transaction was closed, and, of course, all the details of it were taken up by the board of directors of the companies, and with that I had nothing to do; in fact, I went to Europe the next day.

Q. The plan was submitted to the various boards of directors and approved and carried out?

A. No; I beg your pardon. The terms were submitted and then the two companies went to work—the three companies rather—to complete the papers.

Q. Yes; but the directors, after that, approved it? 2145

A. Of course. We had no power, of course, neither Mr. Hill or I, to bind the roads. We had the moral influence. We told the directors we thought it was the thing to do; but I mean I had nothing to do with the detail you are speaking of; in fact, it wasn't done at once. It took six months, didn't it?

Mr. Steele. We got the bonds out in September.

Q. We have heard a little in this court room about a contest some time last May for the purchase of Northern Pacific stock. When did you first hear that somebody else was trying to buy the stock of the Northern Pacific? 2146

A. Do you mean the Union Pacific interest?

Q. Yes. When did you hear of that?

A. Oh, it must have been about the last of April or the first of May.

Q. Not before then?

A. I didn't hear they were trying to buy it. I heard that it was understood, and, in fact, thought it practically settled,

2147 that they had control when it came to me. It was not an imaginary fact; it was a complete transaction, as I was informed. There was no contest in the matter.

Q. I was alluding now to the famous 9th of May.

A. That was after it was bought. That was when the thing was done.

Q. Now, directly, you heard that the Union Pacific interests —you understand when I refer to them it means Harriman or the Oregon Short Line?

A. I don't understand anything of the kind. I know noth-
2148 ing about that. I know no man, woman, or child, except the Union Pacific interests. I don't know what Mr. Harriman did. I don't want to be misunderstood. When I speak of the Union Pacific interests it may have been Mr. Harriman, or Mr. Pierce, or Mr. Schiff, or somebody else. I know nothing about the names. I only know I heard in Aix, where I was, that the Union Pacific interests had acquired control of the Northern Pacific.

Q. And you, having been the fiscal agent of the Northern Pacific, took steps at the same time to protect the control of the road, undoubtedly?

2149 A. In that connection I will tell you that part of it here now.

Q. You might just as well.

A. When I heard that, I felt in this position: We had reorganized the Northern Pacific. We had placed all the securities of the Northern Pacific, and I knew, as I had always supposed, that there were people—friends of ours and other people—who held practically enough Northern Pacific—we always supposed we had with us people upon whom we could depend to protect our moral control of the property—and consequently when that news came to me I hadn't any doubt
2150 about the fact of the matter, and at the same time this news came so strong, whoever had acquired it, I felt something must have happened. Somebody must have sold. I knew where certain stocks were, and I figured it up. I feel bound in all honor when I reorganize a property and am morally responsible for its management to protect it, and I generally do protect it; so I made up my mind that it would be desirable to buy 150,000 shares of stock, which we proceeded to do,

and with that I knew we had a majority of common stock, and I knew that actually gave us the control and they couldn't take the minority and have it sacrificed to the Union Pacific interests. 2151

Q. You had to pay very high prices for that stock that you bought at that time, did you not?

A. I did not. Higher than I wished to, but not very high.

Q. Higher than the market price?

A. I did not.

Q. You bought that stock in the market?

A. I did, sir; every share of it. 2152

Q. None of it was bought by private negotiation abroad?

A. No, sir; it was all bought in the market.

Q. But the market price had by force of these circumstances become greatly in excess of the actual value?

A. No, sir; not at that time. It did when they came to deliver their stock, but not when we bought it.

Q. Would you mind telling us the highest price?

A. No, sir; I could not tell you that.

Q. All right, sir. I have no right to ask it. What was the market price between the 1st and 7th of May, Mr. Morgan?

A. Send for a stock list; I couldn't tell you. 2153

Q. Roughly?

A. I don't know. I think up to the 7th—I don't think it went above 120.

Q. The prices day by day and hour by hour are stamped on the memories of some?

A. I was not here. You must remember I was in Europe; but that is my impression.

Q. Now, you bought that $15,000,000 of stock, Mr. Morgan, for the account of the railroad, or for the account of your house? 2154

A. Bought it for the account of my house.

Q. Absolutely?

A. Absolutely.

Q. And not at the request of the railroad or anybody representing it?

A. No, sir.

Q. Was it at the request of Mr. Hill?

A. No, sir.

2155 Q. Was not there an understanding between yourself and Mr. Hill that you would buy this stock, or some of it, so as to protect the control of the railroad?

A. I was not here. I could not tell you anything about that.

Q. The matter, then, must have been negotiated by junior members of the firm?

A. I don't know that there was anything of the kind. There was no negotiations to it. I told you we did it for ourselves.

Q. They didn't report to you that they bought it in pursu-
2156 ance of an understanding?

A. I told you exactly there was no understanding that I know of.

Q. What time did you return, Mr. Morgan?

A. I returned in July some time.

Q. What did you ascertain the situation to be upon your return?

A. The situation in what?

Q. As to the dissensions that had arisen and as to the control of the road and matters pertaining thereto.

A. And the situation as regards the control of the road?

2157 Q. Yes, as to who had control.

A. We had control.

Q. You knew that on your return?

A. As I believed, yes.

Q. That is, that you had control of the common stock?

A. Well, there was no other.

Q. Yes, the other stock was to be paid off in January. When you say "we" you mean, of course, yourself and Mr. Hill and his friends?

A. I don't mean anything of the kind. I mean J. P. Morgan
2158 & Co. and their associates—whoever acted with them in the matter.

Q. Did Mr. Hill act with you?

A. He generally did.

Q. In that matter?

A. Certainly; that is to say, his interests were the same as ours.

Q. Do you recall the famous remark of Mr. Hill, alleged to

have been made by him to you, that he would stand without 2159
hitching in that matter?

A. I don't remember any such remark. It is barely possible.

Q. He says he made it.

A. I think it is very likely. I don't remember any such remark.

Q. Now, on your return did you have any conference with Mr. Hill, or Mr. Hill and his friends?

A. On that subject?

Q. On the subject of the control of the Northern Pacific and 2160
of any arrangement to quell the uneasiness that had been in the stock market?

A. Now you come to another subject—the public feeling in relation to the transaction.

Q. Yes, I know. They were anxiously awaiting your return.

A. Well, as I have told you before, we bought that stock in good faith, feeling bound in honor to protect the minority stockholders. We didn't know who they were or anything about it. We knew perfectly well that if the Union Pacific was to acquire or had acquired a majority, there was certainly 2161
a minority we were bound to protect, and this stock was purchased for that purpose. But subsequently came up another question. The people at large, those who didn't know Northern Pacific, or Union Pacific, or anything else, became very much alarmed, fearing that there was going to be a great contest over this thing, which would bring in active antagonism what they deemed the important financial elements of the street; that is, what they talked about. They were going to have a battle in Wall street, and I don't know—well, they were going to have all sorts of things, and it had spread to such an extent that it became absolutely essential that some- 2162
thing should be done. That was before I returned. It had taken some shape. Something should be done to allay that public excitement and they had several conferences. I was not here and don't know anything about how they were brought about, or whether they were held, or who was present, or anything of the kind in relation to them. But finally a paper, at least not a paper but an agreement or whatever it

2163 is—an understanding was arrived at which was published in the papers, that there was nothing of that kind; that the election to be held in October of the board of directors of the Northern Pacific would be left to me to decide. Subsequently the "Morgan interests," as they were called, should be left independent to manage that property, and that was decided upon. When I got back I found that this feeling had not entirely subsided, and there was still a great deal of anxiety, so I thought it was best to act at once, and I drew up a paper. I drew up a letter stating who I thought should compose that
2164 board and sent it to the Union Pacific interests, or the people that had signed this, J. P. Morgan & Co. and others, and that was carried out. It was thought best, too, that the thing should not wait until October; in other words, better have the changes made at once in order to show there was no hostility, and consequently I suggested to some of the directors that they had better make the change then in the board instead of waiting until October, and that was done, and that seemed to suit the people's mind a good deal, and the thing simmered and died out—that public excitement.

Q. So that you found upon your return that it had been left
2165 to you to designate a new board?

A. I did.

Q. And if that agreement had not been reached the Union Pacific, having the preferred stock, with its voting power, could have elected its own board; that is a fact, is it not?

A. That is a legal question; I am not prepared to say.

Q. I understand there is no question of law as to the voting power of the preferred stock, and as it is accepted by everybody and testified to here, I think, that the Union Pacific had a majority of both classes of stock?

A. No, sir; they had a majority of the whole.

2166 Q. I mean a majority of the whole; so that if that agreement had not been reached they might have elected their own board?

A. I am not prepared to say that. I will explain to you why; because if the board of directors had then and there declared the preferred stock payable on the 1st of January, I doubt very much if they could have voted on it.

Q. Don't think they could have voted on it?

A. I don't think so if it was declared payable, but still I am only telling you. You asked me my opinion. At any rate, happily, that has all been settled since, and we have not got to decide those questions. 2167

Q. On your return or thereafter, did you meet Mr. Schiff or Mr. Hill, or Mr. Harriman?

A. I think it is very likely. I don't remember.

Q. Do you remember meeting Mr. Schiff?

A. I don't remember. I have no doubt I did. I don't know what point you have.

Q. I mean about this matter; about the question of the election? 2168

A. Oh, no; I did it myself. I sent the letter on.

Q. Did you consult Mr. Hill about that?

A. I told him what I was going to do.

Q. You did not consult with him?

A. No, I should not; I did not think anybody had anything to say about it but myself. They had been kind enough to trust me in the matter, and I did not consult Mr. Harriman, and I don't think I consulted anybody; at least, if I did, I did not consider it in any way that made it a factor of the case at all. I wanted to be in a perfectly independent place. I felt 2169 that I was acting in a fiduciary capacity, to allay this feeling, and I was acting without any influence from anybody. I don't think I satisfied anybody, but I accomplished the object.

Q. Mr. Morgan, you know that the Union Pacific, of course, was a competing line with the Burlington. You know that it had attempted to wrest your property away from you; what was the object in putting their representatives on the board?

A. Simply to show that there was nothing that the Northern Pacific management, or J. P. Morgan & Co., or anybody, which had bought the Burlington, to show that they were 2170 acting under what we know as a community of interest principle, and that we were not going to have that battle on Wall street. There was not going to be people standing up there fighting each other.

Q. What is community of interest?

A. The community of interests is that principle that a certain number of men who own property can do what they like with it.

2171 Q. But they sha'n't fight one another?

A. There is no fighting about it. If they choose to fight their own property—but people don't generally do that.

Q. Is not this community of interest idea one of working harmony?

A. Working in harmony—yes.

Q. Even though they own competing and parallel lines?

A. No; they own them all.

Q. And they will work in harmony together?

A. No, no; I think the language is sufficient to tell you. It
2172 is not an idea of my creation. I have only used it because I felt you would understand what I meant.

Q. There never had been a representative of the Union Pacific on the board of the Northern Pacific before, had there?

A. No; and I think that the people that were more than surprised that they were put on were the Union Pacific interests themselves.

Q. It was a most unusual thing to put opposing interests on the board?

A. It was; it showed that we had nothing to fear from it, that was all.

2173 Q. Was there any special object in putting Mr. Gould on the board?

A. He was in the Union Pacific interests at that time.

Q. Mr. Gould and one other?

Mr. Stetson. He never was put on the Northern Pacific board.

A. I have forgotten now who I put on. I don't think he was put on.

Q. No, I was mistaken. Now we come, Mr. Morgan, to the famous 13th of November, when they organized the Northern Securities Company.

2174 A. I think you had better go back a little.

Q. When did you first hear of the plan to organize the Northern Securities Company, or a securities company of any kind, or a holding company?

A. A securities company in connection with the Northern Pacific?

Q. And Great Northern—yes.

A. No; in connection with the Northern Pacific or Great 2175
Northern.

Q. Take the Northern Pacific.

A. That was after I came back.

Q. How long after you came back?

A. Oh, a long time after I came back.

Q. By whom was the matter first brought to your attention?

A. I think it was rather in my own mind, as far as the Northern Pacific was concerned.

Q. Well, as far as the Great Northern was concerned, when 2176
was that first suggested?

A. I had heard it discussed for a year or two.

Q. Had you talked with Mr. Hill generally about it?

A. I think I had. That is, not in any detail, with the exception of being to a certain extent a stockholder in the Great Northern. I talked to him on that subject.

Q. And that was a separate holding company for the Great Northern?

A. Yes, sir.

Q. And then you had that in your own mind to have a hold- 2177
ing company for the Northern Pacific?

A. That came up after I came back. When we found ourselves in this position, with the danger, having escaped as I thought at that time from what I thought was a great danger; that is to say, our property being absorbed by a competing line without our knowledge or consent. It occurred to me something ought to be done to prevent that, because, while we chose to defend the property, I did not want it to go on indefinitely, and I thought the best plan was to go to some trust company. My idea was first to go to some trust company to take the Northern Pacific stock and hold it.

Q. That is, to hold control? 2178

A. Hold control of the stock. Just to surrender it to them and take their receipt.

Q. For the purpose of keeping control in one place?

A. No; not alone to keep it in one place, but to keep it so that the policy of the company upon which its future depended could be continued. We didn't want convulsions going

2179 on. You cannot take a company with three or four hundred millions of securities and do one thing one day and another thing another. It destroys confidence in the first place, and everything of that kind. What I wanted to accomplish was to put that stock so that it could be protected—to maintain the policy of the company as it then existed.

Q. Held in one hand, in other words?

A. No; not in one hand, because it could be held in third hands. I wanted it so that I could go to Europe and not hear next day that somebody had bought it for the Boston and Maine, or I don't know what other company. I wanted the
2180 Northern Pacific stock put where nothing could interfere with the policy I had inaugurated and for the carrying out of which we were perfectly satisfied and morally responsible.

Q. It being the idea that the control would be in your hands?

A. It was not a question of control. It is a moral control.

Q. I know.

A. It was not a question of that kind. It was a question of moral control.

Q. When did the idea of putting the control of both these
2181 roads in one place come up; after your return?

A. I suggested to Mr. Hill "why not." I think I did, at any rate. If it was not, it may have been by Mr. Steele. Whether I did it or J. P. Morgan & Co., I think we are responsible for having made that suggestion.

Q. When was that?

A. I suppose in October.

Mr. Stetson. You returned from Europe the 4th of July, didn't you, and went to California in October?

A. In October.

Mr. Stetson. The latter part of September or the first week
2182 in October?

A. Yes.

Mr. Stetson. And you were in California all the month of October?

A. Then it must have been just before I went to California.

Q. How long had that matter been under consideration with Mr. Hill?

A. Oh, I don't know.

Q. I mean between you and Mr. Hill? 2183

A. I only knew it as a moderate stockholder in the Great Northern. That was his idea, as it is with a great many of these companies. That was his idea with the Great Northern road, because there were side companies, and all of that he had, and he seemed to think that was the way to manage it. I did not follow it any more. It was not a question of my device; it was his.

Q. In other words, he owning one road and you the other?

A. No, sir; I beg your pardon; not at all.

Q. You know what I mean? 2184

A. Mr. Hill, I say, for the Great Northern road, had had in his mind, evidently, as I understood it, for some time, all that question of putting all the securities of the Great Northern road itself, and all its allied companies—I don't know just what he has got; all sorts of things—steamboats.

Mr. Clough:

Q. Subsidiary companies?

A. All those subsidiary companies, putting them all into a holding company and creating a voting trust. He had some company out in the West; what is the name of that thing?

Mr. Stetson: 2185

Q. St. Peter Company.

Q. So you and Mr. Hill discussed that question during the summer?

A. What?

Q. The question of the formation of a holding company.

A. No, no. Mr. Hill and I—I think it was two years ago Mr. Hill first talked to me about the Great Northern road, when I took stock, and that sort of thing—the little stock I had, 1,000 or 2,000, 5,000 shares—but it had nothing to do with the Northern Pacific road in any way, shape, or manner. Mr. Hill, I have no doubt, thought at one time he could buy 2186 up the Northern Pacific road and do something. I told him then if he could not we could work in harmony; but the law was against him, and he found that out afterwards and abandoned it, and that was settled years ago, when the Supreme Court decided that case.

Q. In the Pearsall case?

A. Yes; that dismissed any question in my mind of that

2187 kind. Everything so far as the Northern Pacific road is concerned, and a holding company, all occurred to my mind subsequent to the 9th of May. My idea was, I can't live forever, and J. P. Morgan & Co. may be dissolved. I wanted this affected, so that the policy we have incorporated and created shall be continued on that property if the stockholders chose to put the stock there.

Q. How soon after your return did you meet Mr. Hill?

A. I don't know.

Q. Very soon?

2188 A. No; Mr. Hill, I don't think, was here when I came back. I don't remember about that.

Q. Did you exchange ideas with him on this subject during the summer?

A. Not to any extent; no.

Q. To some extent?

A. No; I don't remember talking with him until when we came to discuss this question when I made up my mind to do this thing. He was a large stockholder of the Northern Pacific, and I said I think that has got to be done. I will not take the responsibility of going through anything of this kind

2189 again. If a man has got 10,000 shares of stock, and acts with you, and he is your friend, to-morrow somebody comes on and offers him 100 per cent profit, and he will sell his stock, and you will find yourself left in a box. The consequences are too serious. I said, "It can't go on that way."

Q. What was the result of your talk with Mr. Hill?

A. The result of it was that we decided that the Northern Pacific, so far as I was concerned as a stockholder in the Northern Pacific, I would put my stock in provided that he would take everybody else's into this thing that he had proposed to arrange for the Great Northern.

2190 Q. That is this Northern Securities Company?

A. Yes.

Q. That is, provided he would go in himself?

A. Yes; of course. Well, I didn't care whether he went in or not. We had a majority without him. I wanted a majority of the Northern Pacific stock in that securities company; I didn't care who went in, provided there was enough there to protect the Northern Pacific.

Q. You could not have a majority without Mr. Hill, could 2191
you?

A. I don't know—the books will tell you—yes, I could.

Q. Could you?

A. Yes; very easily at that time.

Q. You had, anyway; it was agreed between you and that was done?

A. I mean to say, now that you have raised that question—it never occurred to me before, by the way—Mr. Hill has not got any control in the Northern Pacific and did not have then.

Q. Oh, no; but yours and his holdings put together consti- 2192
tuted a control?

A. No, sir; it did not do anything of the kind.

Q. I mean him and his friends—Mr. Strathcone and all those folks?

A. He and all the other stockholders did; yes.

Q. His little coterie, I mean?

A. He has got no coterie. Mr. Kennedy, you speak of, is a great friend, and I think Mr. Kennedy's interest, if anything, in the Northern Pacific was greater than his interest in the Great Northern. He was just as much a friend of mine, and has been for forty years. Mr. Kennedy and I were in Aix. 2193
He came down to see what in the mischief all this meant. I said I didn't know. He said, "I am going to cable over to tell them to put my stock into your office." I said, "There is no use, because you cannot sign the power," and he said, "Whatever you want done I want done with my Northern Pacific," and that is the way people treated me in the Northern Pacific. Whatever I was willing to do they wanted, and they wanted to put the stock just where I said to keep it safe. That is what they wanted. Well, I appreciated that. I cannot help but being touched by a thing of that kind. Consequently, it is not Mr. Hill and his coterie. It was a question of who held 2194
stock in the Northern Pacific, and the men in the Northern Pacific wanted my policy or our policy from the organization carried out. Take, for instance, which is a case in point, which I suppose you will get at with me pretty soon—that is, how I came to buy the Union Pacific interests in the Northern Pacific. Supposing I had bought the Northern Pacific—I mean the Union Pacific—interests in Northern Pacific and

2195 added it to mine, where would Mr. Hill have been? He would not have had any control at all. I am only speaking to you to show you this. You ask questions. Of course that is all right. You will get the point I want to convey, you know.

Q. Yes; I had always had that thought, that you could have done without him.

A. Mr. Hill and I worked together. I would work with him on anything, but when you say to me—Mr. Hill and I, we worked simply because he was a stockholder of the Northern
2196 Pacific and I was a stockholder; but I was independent of Mr. Hill in that transaction. I wanted simply to keep the stock of the Northern Pacific safe beyond question.

Q. As a matter of fact, there was some sort of an understanding with Mr. Hill that he would do it. You would have been very much surprised if he had not?

A. Simply because I know he wanted to make the most he could out of the Northern Pacific.

Q. And you agreed to work in unison in that thing?

A. He would give me his stock and I could do what I liked with it. In that connection, Mr. Lamb, I would have given
2197 him all my Great Northern stock. He could have done what he liked with that, because I had confidence in him, and he has confidence in me, but it is not a coterie or anything of that kind.

Q. You sold Mr. Hill quite a lot of your stock, didn't you?

A. Yes.

Q. About how much?

A. I don't know. I don't remember now.

Q. About $10,000,000?

A. I don't remember anything about that.

Q. About when was that sold?

2198 A. What?

Q. This $10,000,000 of Northern Pacific to Mr. Hill?

A. I didn't say there was.

Mr. Boutelle. Mr. Hill testified to that, Mr. Morgan.

Q. Mr. Steele, too.

A. I don't know anything about that. Any stockholder that chose to take part of my stock could do so. I bought that stock, as I have testified ($15,000,000), for the benefit of

the protection, and these stockholders came in. I remember 2199
one gentleman came in and said, "Mr. Morgan, you took a good deal of burden in that thing. I want to relieve you of 10,000 shares of that stock." I said, "All right; it cost so much. Make your check and you can have the stock."

Q. So you gave it to him at the price you paid for it?

A. I gave it to him at what it cost, and I gave it to everybody else who wanted it at the same price.

Q. The price you paid for it under this condition?

A. Whatever the stock cost was the price they paid.

Q. Do you remember who conducted the negotiations with 2200
Mr. Hill for a sale to Mr. Hill of that stock?

A. There was no negotiation.

Q. It is a big amount, $10,000,000?

A. You may think so, but when you are talking about a thing where there is 300,000,000 or 400,000,000—10,000,000 of stock is not a very large amount nowadays. I don't consider a purchase of $10,000,000 of stock very much.

Q. To a struggling lawyer it seems so.

A. I told Mr. Hill and all these stockholders whatever I paid for the stock they could have it for, if they wanted it; they said they did not think we ought to take the whole re- 2201
sponsibility of the thing, and whatever we paid for it they took it at. There was no negotiation about it. If they took it they took it; if they didn't we kept it. We have the balance of it to-day; at least we did have it.

Q. These conferences about turning in stock, were they prior to the sale or subsequent to it?

A. What?

Q. I mean the conferences about turning in the stock of the Northern Pacific into a holding company?

A. There was no connection between the two; one was not dependent on the other in any way, shape, or manner. 2202

Q. I mean merely in reference to time?

A. They were all since my return.

Q. Well, about that time these conferences were being held?

A. About that time; yes.

Q. Did you see a circular sent out by Mr. Hill to the stock-

2203 holders of the Great Northern advising them to turn their stock into the Northern Securities?

A. Oh, yes; I got one of those as a stockholder, and I turned mine in.

Q. And you approved of the plan of the Northern Securities Company?

A. I did.

Q. And gave it the benefit of your influence?

A. I did.

Q. You assisted in the organization of the company?

2204 A. I had nothing to do with it.

Q. I mean in the way of consultation or advice?

A. No. Oh, I don't know; I may have been asked about it, but I was not an incorporator or director, or anything about it.

Q. Were you ever consulted as to the men who were to be directors?

A. I don't think I ever knew; I don't know to-day who are the directors.

Q. You were never consulted about them?

A. I don't think I was; at any rate it made no impression
2205 on my mind.

Q. Well, who fixed the ratio of 180 for the Great Northern and 115 for the Northern Pacific?

A. I suppose the board of directors of the Northern Securities Company.

Q. Well, you must have been consulted by them?

A. I think it is very possible I was. I can tell you gentlemen that is just what the stock cost us that we had bought; that is the way the 115 came from the Northern Pacific; it cost just that—the stock we bought to protect the stock, etc.

Q. Then, of course, your house was a large holder of stocks
2206 bought before at the time that the company was in distress?

A. That has nothing to do with the other.

Mr. Stetson. That was the market price of the stock.

A. That was practically the last market price.

Mr. Stetson. Of the stock actually delivered prior to the 9th of May.

Q. How did they arrive at the price of $180 for the Great Northern?

A. That was about what the market price was at that time. 2207
I had nothing to do with that.

Q. Was that determined before the securities company was organized?

A. I suppose so. I know nothing about what the Great Northern did.

Q. The Northern Pacific price was agreed upon before the Northern Securities Company was organized?

A. That I don't know, either. I doubt it. Not before it was organized. It may have been at the same time. I don't know. 2208

Q You would not care to put in your stock to the Northern Securities Company without knowing what they were going to pay for the Great Northern?

A. I didn't. But when you say before it was organized—organizing a company is one thing and receiving stock is another. I knew what the price of the two stocks were to be before I put in my stock, but whether it was before or after the organization—legal organization of the company—I don't know.

Q. You would not have put in this stock unless you had been satisfied that the Great Northern's price was a fair one? 2209

A. I didn't know how much they would get for the Great Northern, but, of course, I would not—you are quite right—unless I had been satisfied with the price. But whether that price was known before or after the legal organization of the company I don't remember, and it did not seem to me material, because before I put in my stock I would know the two prices and the relative value. But a company might have been organized and no stock put in. My impression is that the price was not fixed until after the legal organization, but I am not sure.

Q. But you would not put your stock in unless you were 2210
satisfied?

A. There was no use fixing a price until we knew the company was going through, and all that sort of thing. That is why I believe that the price of the stock was fixed afterwards. I knew the price at which both stocks were to be taken, certainly, before I put in anything I had.

Q. Did the relative proportion seem to you a fair one?

2211 A. It did.

Q. One hundred and eighty dollars Great Northern and one hundred and fifteen for Northern Pacific?

A. It did. If anything, I thought the Great Northern was a little low.

Q. You, then, did acquaint yourself with the standing of the Great Northern and its history?

A. If you take the dividend and the market price of the Great Northern and the uncertainty as to the price of the Northern Pacific—because you must remember that when this
2212 was formed, and all that sort of thing, we did not know whether we were going to be able to settle definitely with the Union Pacific interests, and we did not know either if we were going to get through the 1st of January without legal contest—and we found out from you gentlemen we came very near not doing it—consequently I say the Northern Pacific got their fair share of that deal.

Q. So the stocks did not go in on the basis of actual certainties?

A. They went in as near as possible on what we considered the market price.

2213 Q. Market price is regulated?

A. By the stock markets.

Q. And the fear of lawsuits?

A. Oh, no; I beg your pardon.

Q. And the possibility of trouble with the Union Pacific people?

A. That is just what I said I didn't do.

Q. I have made some analysis of the subject myself, and I thought the Great Northern got a little the best of it.

A. Probably that is because you had Great Northern. I had both. What I mean to say is this: You had control of
2214 the suits, you see. You could remove the suit, and probably that is why you thought the Northern Pacific would go in cheaper. But that was not the case with the other. But what I say is simply this: At 180 and 115, I think, the Northern Pacific, if anything, got a little better of the trade. But that was fixed, because it was the price at which we bought this stock. Undoubtedly, if that stock had not cost quite as much we would not have received as much.

Mr. Stetson. You mean the stockholders of the Northern 2215
Pacific and the Great Northern when you say the Northern Pacific and Great Northern?

A. Oh, no; I mean the stockholders in the companies; the stockholders in the Great Northern did not get quite as much relatively as the stockholders of the Northern Pacific.

Q. When was it first decided between you and Mr. Hill to put both stocks of these companies into one holding company?

A. Mr. Hill did not decide the Northern Pacific. I told him I thought if he was willing we would take it; and that 2216
was probably some time either just before or just after I returned from California.

Q. Then you agreed to do it?

A. No, sir; I told him that would be my decision if everything went smooth. We could not tell at that time if we were going to be able to get our charter.

Q. That was satisfactory to him?

A. It was satisfactory to me if it was to him.

Q. Did he say it was satisfactory to him?

A. Yes.

Q. And you both agreed to it? 2217

A. We both agreed to it.

Q. If you could get your charter and all the legal formalities could be carried out?

A. He was acting for his stock and I for mine, with the condition that if the Northern Securities Company was organized the holders of the Northern Pacific stock should have the right to put in their stock the same as we did.

Q. When was it decided between you or agreed between you that the Great Northern would come in?

A. They were in before; I had nothing to do with that; 2218
that was all fixed.

Q. That they would come into the Northern Securities Company?

A. I have already said to you that the Great Northern Company and a holding company was a thing of Mr. Hill's plan. The question simply was whether J. P. Morgan & Co. should select the Northern Securities Company as the custodian for our Northern Pacific stock or not, so that it was really Mr.

2219 Hill's plan, and the Great Northern went in before I did. I told you before he had arranged that for his road and subsidiary companies, at least that or some holding company, so that was long before this thing came up.

Q. You have explained that it was your idea that it would be a good plan to put the control of the Northern Pacific into a trust company or into a holding company and Mr. Hill apparently held the same theory as to his stock.

A. Not at the same time.

Q. No; not at the same time; he had worked that out years ago in his mind. You had both been working the same thing
2220 out. Why was it agreed to put the stock of both of these companies in one holding company?

A. It seemed to me the better way of putting it.

Q. But why?

A. Why, on the face of it, it did not make any difference to me.

Q. Why put the stocks of both of these companies into one holding company?

A. In the first place this holding company was simply a question of custodian, because it had no other alliances.

2221 Q. It does own other properties?

A. What?

Q. The Northern Securities Company.

A. The Northern Securities Company may own other properties some time, but they do not now.

Q. It owns several companies?

A. I say those are Mr. Hill's companies.

Q. Yes.

A. That is all right. Those are Great Northern companies. It doesn't hold anything. It is an investment or trust company which can hold securities that Mr. Hill may put in, and
2222 we put ours in the same boat.

Q. Putting both companies into one holding company, whoever gets control of the holding company may wrest the stock away from one or the other.

A. That is another advantage which I took into account, and that was that the capital of the Northern Securities Company was so large I did not believe in a night or week anybody would ever be able to get control of it.

2223

Q. They might. It is only $400,000,000.

A. You said just now $10,000,000 was a large amount. If that is so, I think $400,000,000 would be much more.

Q. Can you tell me what special benefits accrued from putting them both in one company?

A. Because it seemed to me the best remedy. The company is so large. For instance, supposing I had gone to the United States Trust Company and they had issued to me some securities for the Northern Pacific (the persons who put their stock in a holding company would desire to have something for it—trust certificates or other securities). Supposing we had put our securities in the United States Trust Company, and they had given me something or other. They have 2,000,000 of stock. Somebody could get hold of that and do what they liked with it. I wanted to put it in a company with capital large enough that nobody could ever buy it, and that is the only one I know of. It is the only investment or trust company that I knew of of that kind where the stock was large enough so that in all human probability I felt that if it was not safe there it was not safe anywhere.

2224

Q. It is a fact, however, that a number of the larger holders of Northern Securities Company stock acting together would control both roads?

2225

A. No, sir; I do not think it would be possible. If you go and select all the stockholders, of course. I have no doubt if you had a list of the stockholders, and take all the largest until you got over $200,000,000, those people would control; but there is no interest that I know of to-day that can control the Northern Securities Company.

Q. When did you first meet Mr. Harriman on your return from Europe?

A. I could not tell you; some time during the summer. It was some time after I had returned, I know.

2226

Q. What conversation did you have with him?

A. I don't think I had any.

Q. Relative to the holding of Union Pacific in Northern Pacific?

A. I had no interview with him on that subject.

Q. Or with Mr. Schiff?

A. Or with Mr. Schiff.

2227 Q. To your knowledge, did any member of your firm have an interview with him on that subject?

A. I had no interview with Mr. Harriman.

Q. When did it come to your knowledge that Mr. Harriman was apprehensive that the purchase of the Burlington might jeopardise his interest?

A. I never knew it at all.

Q. Did you ever have a conversation with him about that?

A. No. On the contrary, I thought they were perfectly satisfied.

2228 Q. And no members of your firm ever had any conference with him?

A. Not that I know. I do not know of any. I never had any. I always supposed they were perfectly satisfied until that was assigned as a reason.

Q. How much of the Northern Securities Company stock does your house own now?

A. I decline to answer that question. I will answer any question that is fair, but I do not think that is fair. I have no objection to answering it; but I do not think in a case of this kind—a corporate thing, you know—questions of a per-

2229 sonal character should be omitted. I am perfectly willing to answer any questions that are public. We own about 164,000 shares of the Northern Securities Company.

Q. Did you hear that the Union Pacific interests sold their Northern Pacific holdings to the Northern Securities Company?

A. I did not. We bought it; J. P. Morgan & Co. bought it. J. P. Morgan & Co. made the negotiation with the securities company. Supposing we had kept that stock that we had bought? That is an illustration of what I was showing you just now.

2230 Q. And that stock was sold at once to the Northern Securities Company?

A. Afterwards.

Q. Will you give us the basis of that transaction and the terms of it?

Mr. Stetson:

Q. Are you doing this for the purpose of establishing a discrepancy? Mr. Perkins has testified to it, and Mr. Steele.

A. Mr. Morgan was not here personally. It was not far 2231
from $90,000,000, Mr. Steele told you, of which about $9,000,-
000 was in cash.

Mr. Bulkley:

Q. And they turned it over to the Northern Securities Company on the same terms on which they bought it?

A. On the same terms exactly as those on which they bought. That is another of those transactions I was speaking about.

Q. In regard to those transactions with the Union Pacific 2232
interests, Mr. Steele has testified that they agreed at one time to pay one price, and they subsequently ascertained that the Union Pacific had less stock than they thought they had.

A. Than we thought they had.

Q. And than they thought they had, or you thought they had. I was putting it in a kindly way for the Union Pacific —and that another price was ultimately paid. Will you tell us what the first price was and what the second price was?

A. There was no price about it. I have forgotten what the first agreement was. That never came to anything, because no transaction was ever based on it. I don't remember the 2233
figures at all. I could not tell you, to save my life; I had nothing to do with it.

Q. Have you heard of or authorized recent purchases of Burlington at very high prices?

A. Me?

Q. Your house.

A. I do not know. I do not think I have bought a share of Burlington stock for two years; at least not for a long time.

Q. And, to your knowledge, no purchases have been made by your house within the last few months?

A. I never heard of them. I cannot imagine what they 2234
want to buy any more for. They have all they want now, and more, too.

CROSS-EXAMINATION.

By Mr. Stetson:

Q. Your present amount of holding in the Northern Securities Company—about 164,000 shares, as you testified—is sub-

2235 stantially the same amount that you have held from the beginning?

A. Yes, sir; substantially; that is, originally we held 172,000 shares, and now we hold 164,000 shares.

Q. Mr. Morgan, referring to the purchase of Northern Pacific stock in 1896 by Mr. Hill and other gentlemen, you referred to them, or the questioner referred to them, as being Mr. Hill's associates. I would like to know of you, were these sales made to Mr. Hill and to other purchasers as an association, or were they made to a number of gentlemen separately?

2236 A. They were made to Hill, as I understood it. I do not remember how the transaction was made. I understood when the company was reorganized there was a certain amount of stock left over in the hands of the reorganization committee, and it was that stock which I sold to Mr. Hill. What he did with it at that time I did not know. It was not until afterwards that I ever knew, by looking at the registry books, how that was done.

Q. You were asked as to the custom of your house in reference to transactions for the Northern Pacific and the acquisi-
2237 tion of branch lines and extensions, etc. It was suggested to you that your usual method was to form an underwriting syndicate for that purpose. Is that a fact?

A. We never had any extension lines that I know of; if we did I don't remember.

Q. You have no recollection of any underwriting syndicate that you formed for the Northern Pacific since the reorganization in 1896?

A. I don't remember anything at the moment, but I mean to say that is our way of doing business; if we make a large loan we form a syndicate to carry it out.

2238 Q. Voting trust ended in December, 1900, I understand?

A. 1901; January, 1901.

Q. It terminated in January, 1901, which was a year before the time fixed for its expiration?

A. Yes.

Q. You have from time to time been asked and have answered concerning your carrying on negotiations, or making

arrangements for the Northern Pacific. Who actually com- 2239
pleted the arrangements and carried them into effect?

A. I don't know.

Q. You or the board of directors?

A. The board of directors; I never carried any into effect.

Q. What was the meaning of that statement, you did this or that?

A. We did whatever the board of directors requested us to do.

Q. At all times one or two of your partners were members of the board?

2240

A. They were.

Q. And the conference in your office on this subject was between you and the directors of the Northern Pacific who were in your firm?

A. No, sir; I mean negotiations with the Northern Pacific, except, as I say, a certain amount of conversation in regard to what I called moral responsibility. I would talk that with any director, but when it comes down to the course between J. P. Morgan & Co. and the Northern Pacific, J. P. Morgan & Co. act with the officials of the company authorized by the by-laws.

2241

Q. I mean the daily conference between you and the members of your firm who were directors, that was the way you got your advice as to the wishes of the board?

A. They would tell me what the board wanted, but I did not deal with them as members of the board, I was not acting with them in that capacity.

Q. I understood that, but I mean as channels of communication?

A. Channels of communication; yes.

Q. The question was put to you two or three times in different forms as to why you recommended these gentlemen for 2242
the board of the Northern Pacific in July, 1901. Was it your intention to be understood as saying these gentlemen were put on here not for the interest of the company itself?

A. My impression is that the names that I proposed would be a sufficient answer to that.

2243 Q. But the question was put several times. Did you consider these proper and suitable directors for the interests?

A. I never put anybody on any board I did not think was capable of filling it.

Q. And it was to the interests of the Northern Pacific to have these gentlemen?

A. Certainly.

Q. In referring to the Northern Securities Company by way of illustration you have used the example United States Trust Company once or twice. Are you to be understood that the Northern Securities Company held the several certi-
2244 ficates in the nature of a trustee or as owner?

A. As owner; but what I meant is this, while the Northern Securities Company as such issued stock for this, a trust company would have issued a receipt, we have issued stock, consequently we could control it. I say, if I had put them in a company with $2,000,000 of stock it could have been easily controlled, but in the Northern Securities Company, which is the only company I know of up to this time where the stock itself is represented, you cannot control that stock without buying a majority of $400,000,000 or more of stock.

2245 Q. Did or did not the organization of the Northern Securities Company have any relation to the retirement of the preferred stock of the Northern Pacific?

A. Nothing whatever.

Q. Was there, or was there not, in any way any connection between the organization of the Northern Securities Company and the retirement of the preferred stock of the Northern Pacific?

A. Nothing whatever.

Q. Was the retirement of the preferred stock of the Northern Securities Company undertaken for the purpose of giving
2246 to the Northern Securities Company an opportunity to acquire a majority of the common stock of the Northern Pacific Company and thereby control that company?

A. Nothing whatever, because they already had it.

Q. Was the retirement of said stock the part of any scheme or plan to allow the Northern Securities Company to obtain a majority of the stock of the Northern Pacific, or any of the stock of said company?

Mr. Boutelle. That is the same question just asked. 2247

Q. Did Mr. Hill, so far as you know, have anything to do with the retirement of the preferred stock of the Northern Pacific except voting thereon as a director?

A. I don't think he was a director at the time that was passed; he had nothing to do with it.

Q. Was the retirement undertaken in good faith in pursuance of the long-established understanding that the stock should be retired?

A. I have testified to that already.

Q. Was there any scheme or plan entered into by anyone, so far as you know, whereby the retirement of the Northern Pacific preferred stock was to be used to vest in the Northern Securities Company, or in anyone else, the control of the Northern Pacific? 2248

A. Certainly not.

Q. Was the fact of acquiring a majority of the stock of both or either the Northern Pacific and the Great Northern Railway Company made a condition of the organization of the Northern Securities Company, so far as you know?

A. Nothing at all. On the contrary, we only wanted one.

Q. Was it, or was it not, determined, so far as you know, to form the Northern Securities Company without knowledge whether the company would, or could, acquire a majority of either or both of these stocks? 2249

A. Nothing whatever. We had a majority of the Northern Pacific; we knew that.

Q. Was it agreed by anyone, so far as you know, before the Northern Securities Company was organized, that the so-called Harriman or Union Pacific stocks in the Northern Pacific should be placed in the Northern Securities Company?

A. No; we did not require it.

Q. And you did not know that it would be done until after the consummation? 2250

A. Not until after.

Q. In the organization of the Northern Securities Company, or previous to this organization, so far as you know, was there any agreement or understanding of any kind between J. P. Morgan & Co., or any firm, and Mr. Hill, or any gentleman acting with him, that the said company would be organ-

2251 ized for the purpose of acquiring the control of the stocks of the two railway companies for the purpose of maintenance of railway rates, suspension of competition and control of competition, or the restraint of trade and commerce in any manner whatever?

A. It never entered our head.

Q. Was the question of controlling and competition and regulating rates, or maintaining rates, or fixing rates in any way, one of the objects in forming the Northern Securities Company, so far as you have ever heard?

2252 Mr. Lamb. I shall have to object to that question.

A. No.

Q. In selling the stock in Northern Pacific belonging to J. P. Morgan & Co. to the Northern Securities Company did your firm act by agreement with other stockholders, or did you act individually?

A. We acted individually, with the understanding that every other stockholder should have the same right, at the same price that I have testified to already.

Q. Do you remember what were the terms of the circular of the Great Northern to which you have referred? You have

2253 spoken that the Great Northern asked you to come in. Did they ask you to come in or offer an opportunity?

A. They offered me the opportunity at $180.

Q. But they did not ask you to?

A. Oh, no.

RE-DIRECT EXAMINATION.

By Mr. Boutelle:

Q. The plan of retirement of the preferred stock of the

2254 Northern Pacific as ultimately adopted and passed upon by the board of directors was arranged and agreed upon before it was submitted to the board, was it not?

A. Do you mean the financial plan?

Q. No; the general plan and scheme was outlined and thereafter submitted to the board approved by them, was it not?

A. Adopted by the board; yes.

Q. Now, how long before it was actually submitted to the board was that plan gotten up? 2255

A. Oh, my own impression is that it was the very day.

Q. Do you know, Mr. Morgan, whether the preferred stockholders were ever offered the opportunity of converting their preferred into common stock?

A. Certainly not. They had nothing to do except take their money.

Q. What was the reason for adopting the plan that was adopted in such a way as to deny the preferred stock holders the right to convert their stock into common? 2256

A. It never was denied; it never was even thought of.

Q. If that plan had been adopted and an offer had been made to the preferred stock holders to convert their preferred stock into common, the Union Pacific interests would have had a control, would they not?

A. No; the stock belonged to the Northern Securities Company at the time; they would have got it all.

Q. No; before the plan of retirement, Mr. Morgan.

A. When was that put out?

Q. The 13th of November. Do you recall, Mr. Morgan, what the amount of the Union Pacific holdings were? 2257

A. No, I don't—about $78,000,000.

Q. In refreshing your recollection, was it not subsequently $37,000,000 of common and $40,000,000 of preferred?

A. That is what I remember—about that.

Q. And it was claimed by the Union Pacific, and I understood you to testify, that they had a majority in there at that time?

A. No, no. If you added the two stocks together.

Q. That is what I mean.

A. Adding their holdings of both stocks together they had at that time a majority, but that did not give them control. 2258

Q. Well, what ordinarily controls a corporation besides a majority of the stock?

Mr. Stetson. The board of directors.

A. The board of directors and the conditions under which the stock is issued.

Mr. Stetson. So the Supreme Court has decided.

2259 Q. Was the board of directors of the Northern Securities Company submitted to you before it was adopted?

A. I don't think it was. I do not remember, and I don't know who are directors of it.

Q. You don't recall the fact of its having been discussed with you who should compose that board?

A. I don't think it ever was.

Q. Did you have anything to do with the composition of the Burlington and Quincy boards, either railway or railroad?

A. I don't think I did. I don't remember to have done so.
2260 It is possible that I may, but I don't remember; I didn't care about it.

Q. Do you recall whether you were consulted or informed before those boards were elected as to how they should be composed?

A. I don't think so.

RE-CROSS EXAMINATION.

By Mr. Stetson.

2261 Q. In the conduct of your firm did you generally rely upon some of your associates and partners for the details?

A. I relied on them entirely.

Q. You don't pay much attention to the details, except something in which you have a particular interest?

A. I keep a pretty good lookout for the details; yes.

Q. But as to these dates and amounts?

A. Oh, that I don't remember.

Q. You pass upon questions of policy and determine the course of business?

A. I help them along.

2262 Q. You returned from California the very end of October, did you not?

A. Yes.

Q. The plan for the retirement of the preferred stock was adopted by the board of directors on the 13th of November?

A. Yes.

Q. Now, so far as your knowledge or participation in the completion of that plan, it was between those dates, was it

not? Between your return from California and the 13th of November? 2263

A. Of course; it could not have been otherwise.

Q. I mean it was not taken up before you went to California?

A. Oh, no; I think we finished it up the day we issued it.

Q. Yes; you did finish it up then, but the discussion was between those dates?

RE-DIRECT EXAMINATION.

2264

By Mr. Boutelle:

Q. You have stated in your examination that it had been understood from the first that when conditions were ripe that the preferred stock issued on the organization of the Northern Pacific would be retired?

A. Yes.

Q. But up to 1901, the time when this plan that was finally consummated was adopted, no plan had been devised for the retirement of that stock, had it?

A. No; but it was always the idea that the time would come whenever the credit of the company reached a point when the common stock to meet it could be sold at par or above it. 2265

Q. But there was no specified plan of retirement until this time?

A. Oh, no; there was no other way of doing it but the one we adopted.

Q. Was it impossible to have offered to the preferred stock holders to convert their stock into common?

A. It was the right of the company——

Q. Was it impossible, Mr. Morgan? 2266

A. Certainly, it was.

Q. I am not speaking about the question of right as between the two classes of stockholders.

A. Absolutely impossible. That is the only way it could be done. Under the plan of reorganization the common stock holders were entitled to the benefit of retiring that preferred stock.

2267 Q. But the question of possibility and policy may be different?

A. Oh, no; it is the same with us.

Q. Do you know that the preferred stock holders would have refused to convert their stock into common?

A. At what time?

Q. At the time that you actually retired that stock.

A. Certainly not; they would have converted it with great pleasure.

2268

RE-RECROSS EXAMINATION.

By Mr. Stetson.

Q. Would it have been just to Mr. Power and the other common stock holders to have given all of this common stock to the preferred stock holders?

Mr. Boutelle. That is objected to as calling for a conclusion.

A. What I mean to say is this. I did not finish my remark
2269 on that subject. There is so much interest in this case, and with all these questions published we like to understand it, and in addition I want to say this. What I say is, that under the plan of reorganization that right to retire the preferred stock became in fact the right of the common stock holders. That is to say, it was the common stock holders who would benefit by the retirement. Supposing they had attempted against my judgment to have done what you say—that is, offered the preferred stock holders the right to convert into common stock. I, as a common stock holder, would have immediately got out an injunction to stop it. The preferred
2270 stock holders were only entitled to par and interest at 4 per cent. That is all they could claim under that law, and those were the only rights they had.

Q. Then you agree with Judge Scott and Judge Lochran in their holdings to that effect?

A. I don't remember what they held.

2271

E. H. HARRIMAN, being duly sworn as a witness on behalf of the complainant, testified as follows:

DIRECT EXAMINATION.

By Mr. Munn:

Q. Mr. Harriman, you are a member of the board of directors of the Union Pacific and chairman of its executive committee, I believe?

A. Yes, sir. 2272

Q. You are also officially connected with the board of directors and the executive committees of the allied interests of the Union Pacific?

A. Nearly all of them.

Q. And you held such positions during the year 1901?

A. Yes, sir.

Q. On or prior to May 9, 1901, had you, acting for the companies or railway interests that you represented, acquired certain stock in the Northern Pacific Railway Company, amounting in round numbers to about seventy-eight million dollars, par value? 2273

A. Yes, sir.

Q. And that stock stood in your name, and that of Mr. Pierce, holding it for the interests that you represented?

A. Yes.

Q. Did J. P. Morgan and Company, or any member of that firm, open negotiations with you, looking to the purchase or acquisition of such holdings during the fall of 1901?

A. Does it make any difference whether I opened the negotiations with them, or they with me? I don't remember. It was either one or the other. The negotiations were opened. 2274 Or they may have been opened by some intermediate party. I don't remember just how it was.

Q. At what time were those negotiations opened?

A. It would be difficult for me to state within a month. It was September or October, I should think.

Q. It was either during the month of September or October, 1901?

A. I should think so.

2275 Q. How long did those negotiations continue before they were finally consummated?

A. I should think about a month or six weeks; possibly two months.

Q. With whom did you have your first dealings in these negotiations, if you remember?

A. I couldn't remember.

Q. Was it with Mr. Bacon of J. P. Morgan & Company?

A. I had many talks with Mr. Bacon. I had talks with nearly every member of the firm.

2276 Q. In these negotiations were they acting for themselves, or acting with the understanding that these securities or this stock was to be turned over to some holding company when organized?

A. They never disclosed to me whether they were acting for themselves or somebody else.

Q. Before the negotiations were finally closed was it understood that you were to take some stock in a company to which this stock was to be transferred?

A. That is my recollection.

Q. And was that the Northern Securities Company?

2277 A. It never was designated by any name.

Q. You didn't learn what company was to take it until you received the stock of that company in exchange?

A. Practically at that time.

Q. Did you understand, from the beginning of these negotiations, that this stock was ultimately to be turned over to some holding company which was to be organized?

A. No, I can't say that there was any understanding at the beginning of the negotiations for a settlement of whatever differences we might have in regard to that stock, whether it was to be taken by them or by a holding company, or how it
2278 was to be paid for. It was only towards the end, when the thing crystallized, that the suggestion was made that payment should be made partly in cash and partly in a holding company stock. I think it was just toward the end of the negotiations when we were considering whether we would break away or get together on it.

Q. Well, did you understand at any time that they were

acting for themselves in the matter and expected to take the 2279
stock themselves?

A. I had no understanding upon that subject.

Q. They were simply trying to secure this stock on some basis, then?

A. That is the substance of it.

Q. And it was not until toward the end of the negotiations that you learned they were acting for some holding company?

A. I didn't say I understood they were acting for a holding company. They didn't disclose to me that they were acting for anybody else at all during the negotiations.

Q. Well, you finally learned that the stock was in fact to be 2280
turned over to a holding company?

A. There never was anything on their part, it seems to me, that would lead me to infer that they were to turn that stock over to a holding company. Towards the end, when the matter crystallized, and when we were very nearly at the end of our tether, they offered to pay for these shares, in the stock of a holding company so much, and so much in cash. Now, there was nothing said as to whether they would turn this stock over to a holding company or whether they would hold it themselves; but they would give us that holding company's 2281
stock in part payment.

Q. When did you learn that? How long before you actually delivered the stock?

A. Before we delivered our shares?

Q. Yes.

A. It was several days. I don't remember just when. Perhaps two or three days. It may have been within three or four days, or perhaps two days. I have a great deal to do, Mr. Munn, and since our talk the other day I have been trying to refresh my memory on this very thing; but I was pretty busy in other matters at that time, and have been since. 2282

Q. When you found that you were to take the stock of some other company in part payment for this stock, of course you knew then that they were acting for a holding company, did you not?

A. I don't see how I could know.

Q. Well, did you, Mr. Harriman?

A. No, I don't see how I could.

2283 Q. When did you first learn that this stock was to be delivered to the Northern Securities Company?

A. When it was delivered.

Q. That was the first you knew about that?

A. That is my recollection; the first I knew was when it was delivered to that company.

Q. When did they first make a proposition to you to make payment for this, or part payment for it, in the stock of some other company?

A. I think that was towards the end of our various conferences and negotiations, as I said; within a few days, per-
2284 haps, of the time the thing was absolutely closed.

Q. Now, during these various conferences you had when these negotiations were pending, what was the talk about payment for your stock? Was it to be paid for in cash, or how were they to pay for it?

A. I don't recollect that there was anything said as to just how it was to be paid for until towards the end.

Q. What did these negotiations relate to, then? Whether you would surrender your stock or give it up?

A. Whether we would do anything with our stock except
2285 to stand where we were on the basis of holding preferred and common stock.

Q. I suppose when you acquired the stock you supposed you had acquired a controlling interest in the Northern Pacific?

A. Practically that is what we thought.

Q. And did they contend that they had the right to retire this preferred stock which you held, without your consent?

A. Yes, sir.

Q. That contention was made during these negotiations?

A. I think steps were taken to retire it, before the negotiations were ended.

2286 Q. You mean that official action had been taken, or that they told you they were going to retire it?

A. I think action had been taken.

Q. The record shows that the action taken to retire the preferred stock was on November 13, 1901.

A. It was about that time, then.

Mr. Young. And the record shows that your sale was closed after the fifteenth.

Witness. Then, I say it was practically about that time. 2287

Q. When in these negotiations did you first learn that they intended to retire the preferred stock?

A. I think when the action was taken.

Q. Up to that time, then, you supposed you had a controlling interest in the Northern Pacific by your holdings?

A. Yes, sir.

Q. And why were these negotiations pending, then, looking toward a settlement of your disputes, if you had started in to buy a controlling interest in the Northern Pacific and supposed you had it, and no questions were raised about that 2288 retirement?

A. Well, of course it was stated to us that this preferred stock could be retired.

Q. Who made those statements?

A. Everybody. It was published in the papers. Statements were made by the directors and by people connected with the company, and published in the papers. I think you will find public statements were made at that time, that that was the intention. But of course the actual steps taken for that purpose were not taken until about the time we made our trade. And if they hadn't been taken and it hadn't been 2289 retired, we probably would have been in control.

Q. You understood, then, during these negotiations and prior to the time you closed the transaction——

A. That there was a probability——

Q. —that there would be an effort made to retire that stock without your consent?

A. A probability of it, yes.

Q. Did Mr. Morgan, or any of the representatives of J. P. Morgan & Company with whom you negotiated, state to you that they intended to do that?

A. I imagine they did. I don't remember just what—— 2290

Q. Well, that was one of the principal inducements that led you to finally surrender your holdings, was it not?

A. Practically.

Q. When did this discussion regarding the retirement of the preferred stock first come up, as you remember it?

A. I think in the summer of 1901.

Q. So you had that in mind, when negotiations were first

2291 opened between yourself and the firm of J. P. Morgan & Company, of course?

A. I presume that that was one of the influences. I don't know whether I had it in mind or not. I didn't know just what we would do.

Q. At the time you finally consented to accept in part payment for your holdings, stock in a holding company, did you insist upon any basis on which any other stock of the Northern Pacific Railway Company should be acquired by that holding company?

2292 A. No, sir.

Q. You finally agreed to turn in your holdings and receive from the Northern Securities Company upwards of eighty-two millions in stock of this company?

A. Yes, sir.

Q. Did you know at that time on what basis this holding company was to take in any other Northern Pacific or Great Northern stock?

A. Yes, sir.

Q. On what basis?

A. $115.

2293 Q. For the Northern Pacific?

A. Yes.

Q. And what for the Great Northern?

A. $180.

Q. Did you make any request or demand that they should not take any of the stock of either one of these companies at a higher rate than that?

A. No, sir.

Q. Did you understand that they would not?

A. I did not.

Q. Were you willing to surrender your holdings to a com-
2294 pany and allow it to determine whether they would exchange their stock with some other holder for twice the amount that you were getting?

A. Not if I supposed they would do it. But there was no stipulation.

Q. Well, you understood they would not?

A. I don't think the thought crossed my mind.

Q. Did they represent to you that that was the basis on 2295
which they were going to take in the stock?

A. The statement was made to me that they would put this Northern Pacific stock into a holding company and give us—not this Northern Pacific stock—but that they would give us in part payment a holding company's stock on the basis of 115 for Northern Pacific, and, if Great Northern were taken in, on the basis of 180 for Great Northern. They didn't state how much they were going to take in or how little they were going to take in; nor did I ask them to stipulate that they would not take any more than a certain amount, or to 2296
agree to take a minimum amount. The statement was simply made that they were going to form a holding company, or had formed a holding company, and would pay us in this stock, and that those were the terms on which it was to be bought.

Q. Did they state to you that if they took in any other stock than what you would surrender to the holding company, they would take it on the basis of 115 for the Northern Pacific and 180 for the Great Northern?

A. I don't think that statement was ever made. It was a simple statement that they were going to exchange these 2297
shares of Northern Pacific and Great Northern on such a basis, and that they would make us part payment in that stock.

Q. That is what I want to get at. They told you, then, that certain of the holders of the stock of the Great Northern and the Northern Pacific were going to exchange their stock for the stock of the Northern Securities Company, on the basis of 115 for the Northern Pacific and 180 for the Great Northern?

A. They didn't say certain ones were, but they were going to form this holding company, and that they would pay me 2298
in the holding company's stock, which stock should be issued on that basis. They didn't say that they had agreed to exchange certain stock.

Q. No, but what I want to get at is this. Didn't you understand from their statements that the basis of exchange, if any was made, was 115 and 180?

A. Yes.

2299 Q. That is, 115 for Northern Pacific and 180 for Great Northern?

A. Yes.

Q. Were you consulted at all regarding the formation of this holding company?

A. No, sir.

Q. You didn't know where it was going to be organized?

A. No, sir.

Q. And had nothing to do with it?

A. No, sir.

2300 Q. You were not consulted about the retirement of the preferred stock either, were you?

A. No, sir.

Q. Did you make any inquiries regarding who were to be the officers of the holding company, or where it was to be incorporated, or the amount of its capital stock, or anything of that kind, before you agreed to accept its shares in part payment for your holdings?

A. I don't know that I made any inquiries. I presume there was considerable talk about it, but I don't remember that I made any inquiry from anybody.

2301 Q. Do you remember any statements made by persons with whom you negotiated, or by Mr. Hill or his associates, who ultimately formed this company, as to where it was to be incorporated, or the amount of capital stock, or its officers?

A. All I remember is just as I have stated; a statement made to me that if this trade went through they would pay us in the shares of a holding company which would issue its stock in exchange for Northern Pacific at 115 and Great Northern at 180. And I agreed to take so much of that stock in exchange for the shares of the Northern Pacific we held—all the Northern Pacific we held.

2302 Q. But you made no inquiries as to where the corporation was to be formed or the amount of its capital stock?

A. I knew, of course, the amount of the capital stock; but I didn't go into the particulars of the formation of the company at all. That may seem strange. But, in the enormous transactions we have down here, we simply have faith that the man who is doing the thing is doing it properly, or else we don't negotiate or trade with him.

Q. Did you finally consent to surrender your holdings on 2303
the basis on which you did, because you had made up your mind they would carry out the determination you had heard expressed, to retire the preferred stock, and thus take away from you the controlling interest in the stock of the Northern Pacific?

A. I think I recollect pretty clearly that from our standpoint we thought it was better for us to accept that price for our stock than to go into a legal contest.

Q. And you understood that if you did not do that, you would have a legal contest on that question?

A. Well, we took it for granted, naturally, action having 2304
been taken determining to retire the preferred stock.

Q. Well, action was not taken to retire the preferred stock until your negotiations had nearly reached a conclusion?

A. Yes, but they had not reached a conclusion.

Q. That is, you waited until the very last moment to see if they would do what you understood they would do?

A. Well, we were very patient.

Q. Then, if such action had not been taken you would not have surrendered your stock?

A. I don't know. That is a condition we did not have to meet. I don't think I could answer that question fairly, nor 2305
do I think it is exactly a fair question; because the board of directors might have determined (if they had not done it) to have sold our shares for less.

Q. Well, you were acting on behalf of your company largely by yourself at that time, I suppose?

A. Largely.

Q. And your actions were guided by what you have stated?

A. By what I found, the surroundings, yes.

Q. When you began buying this stock for your company or 2306
companies, you did it with the expectation of acquiring control in the Northern Pacific of course?

A. Or an influential voice in the management.

Q. And you knew that you did in fact have a majority of the combined stock of the Northern Pacific after you got through with your purchases?

A. Certainly.

2307 Q. And would continue to control that company unless they retired your preferred stock?

A. Or unless we sold it.

Q. Of course you knew, during these negotiations, that Mr. Morgan and Mr. Hill, and the stockholders of the common stock of the Northern Pacific who were co-operating with them or allied with them, claimed to control the Northern Pacific by virtue of a majority of the common stock?

A. Naturally.

Q. Did they claim to you during these negotiations that they had such majority of the common stock?

2308 A. I don't remember that they did. That was the general talk. I don't think it was necessary for them to even make the statement.

Q. You knew that, of course?

A. Naturally. It was known by everybody. I think it was not necessary for them to make that statement to me, because among the other statements, as I say, about the retiring of the preferred stock, was a statement made and published in the papers.

Q. And they never disclosed to you for whom they were

2309 acting until the transaction was ready to be closed?

A. Do you mean Morgan?

Q. Yes.

A. Do you mean the exact company?

Q. Yes.

A. My recollection is that he did not. In fact I don't think this transaction was closed until practically the very minute the payment was made. I think there was considerable discussion and dispute as to the final payment, and about—I don't remember now whether it was the amount to be paid or whether it was the amount of stock to be delivered; I think

2310 it was the amount of stock to be delivered. They supposed we had somewhat more stock than we really had.

Q. When did you have your stock transferred on the books of the Northern Pacific Railway Company in the name of yourself and Mr. Pierce?

A. I don't remember. It must have been some time before that.

Q. It was prior to the annual meeting in October, wasn't 2311
it?

A. I think so, yes.

Q. And you had all your holdings transferred at that time?

A. Practically all. I don't think it was all; I think nearly all was though. There may have been some of the stock held out; I don't remember.

Q. During these negotiations, did the representatives of J. P. Morgan and Company, with whom you dealt, tell you that unless they organized a holding company and this stock was turned over to such holding company, that the transaction 2312
would not go through?

A. No. I don't think any such statement was necessary.

Q. Well, was any such statement made?

A. I don't remember that the question ever came up. This was a running negotiation, and it was difficult to tell what either side would do. I think until practically the last minute I didn't know what I would do.

No cross-examination.

E. H. HARRIMAN.

Subscribed and sworn to before me this 24th day of No- 2313
vember, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

It is stipulated and agreed by and between the parties to this cause that the negotiations, referred to in the testimony, between J. P. Morgan & Company and E. H. Harriman for the acquisition of Northern Pacific stock standing in the name of E. H. Harriman and Winslow S. Pierce, were begun in the 2314
latter part of September or the early part of October, 1901.

The further hearing of this cause was thereupon adjourned to November 21, 1902, at 11 A. M.

2315 (From U. S. vs. No. Sec. Co., Vol. 1, pp. 150-179.)

CHARLES S. MELLEN, after being first duly sworn, testified as follows in answer to questions propounded by Mr. Lancaster:

Q. You are the president of the Northern Pacific Railway Company?

A. I am.

Q. And have been for how long?

A. Since the 1st of September, 1897.

2316 Q. You are a member of the board of directors of that company?

A. I am.

Q. And have been for how long?

A. Since I was elected president.

Q. In 1897?

A. Yes.

Q. And since your election you have resided in St. Paul?

A. Yes.

Q. And reside there now?

2317 A. Yes.

Q. We have introduced this map in evidence, and I will ask you a few things in reference to the Northern Pacific line. What are the eastern termini of the Northern Pacific system?

A. Ashland, Superior——

Q. In the State of Wisconsin?

A. Yes. Superior, Duluth, Stillwater, St. Paul, and Minneapolis.

Q. And what are the western termini?

A. Portland, Oreg.; Tacoma, Seattle. There are various points known as western termini—that is, that take terminal

2318 rates, but those are the main termini.

Q. I am speaking of the actual termini. The terminal rates are rather fictitious—that is, when you speak of the termini in that sense it is arbitrary.

A. Well, I think the answer to that question is fairly stated by Portland, Tacoma, and Seattle.

Q. That is what I mean, the actual points on the Western slope.

A. Well, our lines go farther west than that, but those are 2319
generally considered the termini.

Q. And you have a line running from Minneapolis and St. Paul to Duluth and West Superior?

A. Yes, sir.

Q. You have a line running westward to Moorhead and Fargo, Moorhead in this state and Fargo in North Dakota?

A. Yes.

Q. And to Grand Forks, in North Dakota, and East Grand Forks, in Minnesota?

A. Yes. 2320

Q. And you have a line running also westward to Breckenridge, in the State of Minnesota?

A. Yes, sir.

Q. And you have a line to Morris, in the State of Minnesota?

A. Yes.

Q. You have no lines south of that?

A. No.

Q. The general direction of your main lines westward is through the States of Minnesota, North Dakota, Montana, Idaho, and Washington? 2321

A. That is the general course.

Q. Are those lines of the Northern Pacific and the lines of the Great Northern, for a large part of the territory through which they run and to many of the points which they reach, parallel and competing lines?

A. They are.

Q. And with reference to the State of Minnesota, Mr. Mellen, are not the Northern Pacific and the Great Northern lines almost generally parallel and competing lines?

Mr. Kellogg. Do you mean all of the lines? 2322

Mr. Lancaster. Practically all of them.

A. Many of the lines are parallel and competing.

Q. From what state does the wheat shipments come into the State of Minnesota and West Superior in Wisconsin?

A. Over the Northern Pacific?

Q. Over both lines.

A. Over the Northern Pacific they come from North Dakota

2323 and from the province of Manitoba and from points within the State of Minnesota.

Q. And on the Great Northern?

A. Well, they come from the same states, and from others.

Q. That is, they come some from South Dakota?

A. Yes, sir.

Q. And also some from Manitoba, on the Great Northern?

A. I would not say as to Manitoba.

Q. As to a very large percentage of the wheat shipments from the West to Duluth and West Superior, and to Minne-
2324 apolis and St. Paul, are not the Northern Pacific and the Great Northern parallel and competing lines?

A. In the transportation of wheat?

Q. Yes.

A. Yes, they are.

Mr. Kellogg. I suppose the same understanding may be had as to his testimony, that all of it is considered as objected to as irrelevant and immaterial, and for the reason that the complaint does not state a cause of action, and it need not be repeated to each question.

Mr. Lancaster. The same objection that you had before,
2325 Mr. Kellogg.

Q. Are you able to give us an approximation, Mr. Mellen, of the percentage of wheat shipments in which they would apply?

A. It would be purely a guess.

Q. But as definite as you can make it would be to say that to a very large proportion of it those lines are competing lines for that traffic?

A. There is very active competition for a large portion of the traffic, if that is what you mean.

Q. More than half of it?

2326 A. I wouldn't care to state a percentage.

Q. It is true, Mr. Mellen, as to a very large percentage of the wheat traffic in North Dakota and Manitoba and in Minnesota?

A. I would state that as to North Dakota and Minnesota. I would not state it as to Manitoba, for I don't think there is any competition.

Q. So far as North Dakota and Minnesota are concerned, 2327
the Northern Pacific and Great Northern are, and always have been, so far as you know, competing lines?

A. Yes.

Q. And how is it, Mr. Mellen, as to general traffic from the western coast eastward, and from the east westward?

A. There is active competition between the two lines for the business.

Q. And always has been?

A. Always has been, so far as I know.

Q. And as to practically all of the through traffic—from the 2328
western termini to the eastern termini, and vice versa—those lines are parallel and competing lines?

A. I wouldn't say that.

Q. I don't think I ought to say parallel. I ought to say they were competing lines.

A. I wouldn't say they were competing lines as to all the traffic. I would say they were competing lines as to a large portion.

Q. As to transportation between Minneapolis and St. Paul, and Duluth and West Superior, and as to all traffic originating in Minneapolis and St. Paul and going by way of the lakes 2329
eastward, are the two lines, the Northern Pacific and Great Northern, competing lines?

A. There is active competition between the head of the lakes and the Twin Cities. As to the business east of there——

Q. I don't mean competition beyond those points.

A. Oh, as to business between the head of the lakes and the Twin Cities, there is active competition.

Q. Whether the freight is merely to stop at Duluth or to go on eastward?

A. Well, I think there is a distinction to be drawn there, a 2330
decided distinction. There is not such active competition between the two railroads as to business that goes east that takes the steamers on the lakes. That is more a competition between the carriers on the lakes and the east.

Q. Well, is there to some extent, competition between the two lines as to that trade?

2331 A. Why, speaking for the Northern Pacific, it forms a link in a line from which there may be competition, but the Northern Pacific interest is very small. It concerns a portion of a link of a through line on which there is competition, but the Northern Pacific interests are unimportant.

Q. On the shipments of coal from the east to Minneapolis and St. Paul, and points west of us, are not the Great Northern and Northern Pacific Railway lines competing ones?

A. They compete for coal between the head of the lakes and those cities, certainly.

2332 Q. Mr. Mellen, please take this book I now show you. I would like you to give a list of the present directors of the Northern Pacific Railway Company.

A. The present directors of the Northern Pacific are George F. Baker, Edward H. Harriman, Brayton Ives, D. Willis James, John S. Kennedy, Daniel S. Lamont, Charles S. Mellen, Samuel Rea, William Rockefeller, Samuel Spencer, Charles Steele, James Stillman, Eben B. Thomas, Hamilton McK. Twombly, and W. P. Clough. Mr. Clough's name is not on there.

Q. Can you, by taking that, give us the names of the direc-
2333 tors on May 9, 1901?

A. I think so.

Q. If you will, I wish you would.

A. Edward D. Adams, Robert Bacon, George F. Baker, Dumont Clark, Robert M. Galloway, Brayton Ives, D. Willis James, John S. Kennedy, Daniel S. Lamont, Charles S. Mellen, Walter G. Oakman, Samuel Spencer, Charles Steele, James Stillman, and Eben B. Thomas.

Q. Subsequent to May 9, 1901, did any of the directors resign, that is, before the annual meeting in October?

A. There did, several.

2334 Q. And will you give us the names of those, Mr. Mellen?

A. The following resigned July 23, 1901: Edward D. Adams, Dumont Clark, Robert M. Galloway, Walter G. Oakman, and Samuel Spencer.

Q. Do you know the circumstances under which those gentlemen resigned?

A. Only by hearsay. I received their resignations and pre-

sented them to the board for acceptance. There were no rea- 2335
sons given.

Q. And of your own knowledge, Mr. Mellen——

A. I only have the same knowledge that you have—what I have seen through the public press.

Q. And of your own knowledge you do not know the reasons for their resignation?

A. Only as I have learned it through the public press.

Mr. Kellogg. You don't know of your own knowledge?

Mr. Lancaster. That is a satisfactory answer and entirely so. Those resignations were in writing?

A. I think so. I have the impression that they were, but I 2336
am uncertain regarding one. I have the impression that Mr. Spencer was present and resigned in person.

Q. And was the meeting at which the resignations were presented held in New York?

A. It was.

Q. And were you present?

A. I was.

Q. And at that meeting certain directors were elected to take the places of those resigned?

A. They were. 2337

Q. And for the sake of clearness I wish you would give us the names now, so we may have them in the record, right before us, of those who took the place of those who resigned.

A. I cannot give you the names of the ones who took the places seriatim, but I can give you the names of five.

Q. Certainly; what I mean is how many were there resigned?

A. Five.

Q. Now, can you give me the names of the five who were elected at that meeting to take their places?

A. I can and will. The men who were elected July 23, 1901, 2338
were: Edward H. Harriman, James J. Hill, Samuel Rea, William Rockefeller and Hamilton McK. Twombly.

Q. Now, can you state, Mr. Mellen, when James J. Hill resigned from the board of directors?

A. I can approximately.

Q. Well, that is near enough.

A. On or about November 13, 1901.

2339 Q. It must have been after the 13th, wasn't it?

A. It was on or about that time, and it may have been—the resignation may have been—a day or two later, probably was; but I fix it on or about that time, because that was the only meeting I recall of his having attended—November 13. He resigned about that time, I don't think at that meeting, but within a day or so.

Q. I want to fix it that it must have been either at that meeting or subsequent to the meeting.

A. I think it was subsequent to the meeting, but only a day
2340 or so. That is my recollection.

Q. And that meeting of the directors, Mr. Mellen, to which you refer, of November 13, 1901, was held after the annual meeting of the stockholders?

A. My impression is that was the first meeting after the annual meeting and was the meeting for organization.

Q. And at the annual meeting of the stockholders held in October, that was, wasn't it, Mr. Mellen?

A. Yes; I think so.

Q. Mr. Hill was elected, among others, a director, was he not?

2341 A. I so understand it. But I was not present at the annual meeting of the stockholders.

Q. Now, after Mr. Hill's resignation, who was elected to take his place?

A. Mr. W. P. Clough.

Q. Mr. Clough had previously resigned as a director of the Great Northern Railway Company, had he not?

A. Well, that I could not say. I only know as Mr. Hill made the statement here.

Mr. Grover. That is the fact.

Mr. Kellogg. That is the fact.

2342 Mr. Lancaster. May we have that as an admission, that W. P. Clough had previously resigned as a director of the Great Northern Railway Company and was elected by the board of directors subsequent to November 13, 1901, as a director of the Northern Pacific Railway Company to take the place of Mr. James J. Hill, resigned?

Mr. Kellogg. Yes; he resigned as a director and officer.

Mr. Lancaster. May it also be taken as an admission here,

to save us proving it, otherwise, that Mr. W. P. Clough, prior 2343
to November 13, 1901, had been a vice-president and director and officer of the Great Northern road for several years?

Mr. Grover. Yes.

Q. Mr. Mellen, can you give us the names of the executive officers of the Northern Pacific Railway Company?

A. I am president; Daniel S. Lamont, vice-president; Henry A. Gray, comptroller; Charles A. Clark, treasurer; George H. Earle, secretary and assistant treasurer; Richard H. Relf, assistant secretary; Francis Lynde Stetson, general counsel in New York; Charles W. Bunn, general counsel in St. Paul. 2344
Those are the executive officers.

Q. Where are the principal offices of the Northern Pacific Railway Company kept and maintained, Mr. Mellen?

A. In St. Paul.

Q. Where are the records of the company kept?

A. At the secretary's office in New York—secretary and assistant treasurer, Mr. Earle.

Q. And does the company maintain an independent office in New York City?

A. It does; at 49 Wall street.

Q. And Mr. Earle has entire charge of the office there? 2345

A. No; the vice-president, Daniel S. Lamont, has general charge.

Q. But Mr. Earle, as secretary and assistant treasurer——

A. Has charge of matters within the province of those duties.

Q. And I understand these records of the stockholders' meetings and the records of the directors' meetings are kept by Mr. Earle?

A. In New York?

Q. In the New York office? 2346

A. Yes.

Q. Have you duplicates of those records in your St. Paul office?

A. I have.

Q. Of the stockholders' meetings and also the directors' meetings?

A. I won't say as to the stockholders, but of the directors,

2347 yes. I am of the impression we have the stockholders, but I am not sure.

Q. And those are in the possession and custody of the assistant secretary, Mr. Relf?

A. They are.

Q. Where are the stock books kept?

A. They are kept in New York.

Q. All the stock is registered and transferred on the books of the company in New York?

A. Yes.

2348 Q. Do you have duplicates?

A. I do not.

Q. Do you have not exactly a duplicate, but do you keep any record of the transfers, a duplicate record in St. Paul?

A. Absolutely none.

Q. So that both the stock books, the certificate books, and the stock ledgers are kept in New York?

A. They are.

Q. And you have no minutes or duplicate copies, or anything of the kind, in St. Paul?

A. Absolutely none.

2349 Q. Mr. Mellen, did you have anything to do with the negotiations leading up to the purchase by the Northern Pacific Railway Company and the Great Northern Railway Company of the stock of the Chicago, Burlington and Quincy Railroad Company?

A. I did not.

Q. Did you participate in any of the conferences or negotiations leading up to such purchase?

A. To the best of my recollection I did not.

Q. Were you consulted by anybody with reference to such purchase?

2350 A. I knew of such negotiations being in progress and was asked my opinion regarding certain features, like the value of the property, and so forth, which I gave.

Q. What individuals, to your knowledge, Mr. Mellen, had these negotiations in charge, representing the Northern Pacific and the Great Northern?

A. I think it was handled by the Northern Pacific through its executive committee.

Q. Will you give us the names of the executive committee? 2351

A. I have given them.

Q. I don't think I asked you that.

Mr. Kellogg. Yes, you did, and he gave them.

Mr. Boutell. That was the executive officers.

Mr. Kellogg. Oh, I guess you didn't.

A. The executive committee now and the executive committee at the time of the negotiation are different.

Q. Give me the executive committee as it was, please.

A. On what date in particular?

Q. From January 1, 1901, on until the purchase. 2352

A. From January 1 until July 1? Is that late enough?

Q. Yes.

A. From January 1 to July 1 the executive committee were: Edward D. Adams, Robert Bacon, George F. Baker, Brayton Ives, and Eben B. Thomas, with the president ex officio, and in his absence the vice-president.

Q. Who conducted the negotiations on the part of the Great Northern?

A. I don't know. I have only general information. I have no personal knowledge.

Q. You say that you were consulted with reference to the 2353 value of the Burlington. By whom?

A. By the members of my executive committee.

Q. Do you know when that purchase was definitely decided upon by the Northern Pacific and the Great Northern?

A. Only as I attended the meeting of the directors wherein the purchase was approved.

Q. And was that matter laid before the board of directors at a meeting which you attended?

A. It was.

Q. And when was that?

A. Well, I am a little confused as to dates, but my impres- 2354 sion is some time in April, 1901.

Mr. Grover. It was before the 4th of April.

A. It may have been, but it was on or about that time. I wouldn't say it was not the 31st of March, nor the 1st of April, but it was about the 1st of April.

Q. At that time had the negotiations proceeded so far that

2355 a definite proposition had been received from the executive committee of the Burlington road?

A. I cannot say that there was any definite proposition from anybody to sell the stock of the Burlington road laid before the board. If I recall correctly, the proposition before the board was whether they should buy the Burlington stock at a price mentioned, but what authority the proposition to buy had that it would be accepted, I did not know then and I do not know now.

Q. Was there any written report submitted to the board of directors at that meeting?

2356 A. There was a typewritten memorandum submitted which was in the form of a preamble and a resolution of authority.

Q. Well, Mr. Mellen, at that time you presided at that meeting?

A. I did.

Q. And at that time did you understand that a definite proposition had been made by the trustees or the executive committee of the Burlington road to the Great Northern and the Northern Pacific as to the precise terms upon which that stock could be obtained by the latter roads?

2357 A. I did not understand there was a definite proposition from the Burlington road. I did understand that if the Northern Pacific undertook to buy in connection with the Great Northern stock of the Burlington road at the price named, the executive committee of the Burlington road would recommend to its stockholders that they accept such price.

Q. Now, that matter was submitted to the board of directors in the form of a typewritten preamble and resolution, was it not?

A. To the best of my recollection, yes. All of our business
2358 is handled in that way. It is prepared so as to detain the directors as little time as possible.

Q. ——

A. I wasn't attaching any particular importance to the manner at all.

Q. Up to the time of that meeting in April, 1901, had you known anything of the negotiations?

A. Yes, by conference with my executive committee.

Q. Did you recommend and approve of that purchase, Mr. 2359
Mellen?

A. I did.

Q. I mean at the meeting; and voted for it?

A. I recommended it both as a director, stockholder and president, and voted for it.

Mr. Lancaster. Is there any objection to our offering in evidence the fifth annual report of the Northern Pacific as Exhibit H?

Mr. Kellogg. No; subject to the objection that it is irrelevant and immaterial. 2360

Mr. Lancaster. We will offer it in evidence.

Q. Mr. Mellen, that deal with the Burlington was concluded on or before the 1st of July, 1901, was it not?

A. I think so, substantially.

Q. And, as a matter of fact, it was concluded very shortly after this meeting to which you refer, wasn't it?

A. No; I don't understand it. The meeting to which I refer, on or about the 1st of April, was a meeting practically to confer authority by the Northern Pacific to make a trade which was made subsequently.

Q. But it was actually made very shortly afterwards, 2361
wasn't it?

A. That depends on what you would call making a trade. The bonds were not delivered, I think, until some time in September, all of them.

Q. But the terms were agreed upon very shortly after that meeting, were not they?

A. I think so.

Q. And the matter concluded as rapidly as possible?

A. Yes.

Q. So that you knew, in fact, prior to May 9, 1901, that the Northern Pacific and the Great Northern had practically 2362
closed that deal, and either had or would get possession of practically all of the stock of the Burlington Railroad Company?

A. I expected they would.

Q. I mean by that that the negotiations had proceeded to that point where it was a practical certainty that they would go through?

2363 A. So far as the committees were concerned, yes; but the action of the committee was dependent upon the deposit of the stock, and my impression is there was a later date set than May 9 within which the stock was to be deposited; or in case a sufficient amount was not deposited, the trade fell through.

Q. Did you, Mr. Mellen, of your own knowledge, at any time, know of the request on the part of Mr. Harriman, representing the Union Pacific, to be allowed to join in the purchase of those bonds?

A. I did not. I knew nothing of it.

2364 Q. Was such a request reported to you at that time?

A. Not at that time.

Q. Was it later?

A. Only as I have gathered it from the Interstate Commerce Commission reports and Mr. Hill's testimony there and Mr. Harriman's.

Q. You have never received any notice of it officially?

A. It never reached me officially in any way.

Q. Were you in New York during the week of May 9, 1901?

A. No; I left there the Sunday night before May 9, for St.

2365 Paul.

Q. And were you there a few days after May 9?

A. No; I don't think I was in New York again until the June meeting. I was in St. Paul May 9, I know.

Q. Did you attend any of the conferences held between Mr. Hill and Mr. Harriman, either at Mr. Harriman's office or J. Pierpont Morgan & Co.'s offices, or Kuhn, Loeb & Co.'s offices, or anywhere else, which resulted in the giving by Mr. Harriman of a proxy to J. Pierpont Morgan & Co. to vote his stock in the Northern Pacific Railway Company?

A. To the best of my knowledge I did not attend any such

2366 conferences.

Q. And do you have now any present recollection of taking any part in the negotiations by which that result was obtained?

A. I feel confident that I had no part in any of those negotiations.

Q. And were you in New York during the time such negotiations were going on?

A. To the best of my recollection I was not.

Q. When did you first learn of the deposit by Mr. Harriman 2367
of the proxy to vote his stock with J. Pierpont Morgan & Co.?

A. Well, it was a few days before the annual meeting, I think. It is my custom to attend the directors' meeting, which occurred the second Wednesday in each month, and my recollection would be that I was in New York about the second Wednesday in October and learned before I left there. I left before the annual meeting. The annual meeting was October 1, was it not, this year?

Q. I don't know just what date it was.

A. I know at the time I was there, prior to the annual 2368
meeting, I was told by one of the firm of J. P. Morgan & Co. that they had Mr. Harriman's proxy; that Mr. Harriman had turned in his proxy.

Q. Were you in New York the 23d of July, 1901?

A. Yes.

Q. And that was the meeting at which five directors resigned and at which five were elected?

A. Yes.

Q. Did J. Pierpont Morgan & Co., or did J. Pierpont Morgan individually, or anyone representing him, name those directors or nominate them? 2369

A. Not to me.

Q. Did you understand that J. Pierpont Morgan & Co. suggested those names and requested the other directors to elect them?

A. It was my general understanding, but not the result of anything any member of the firm told me.

Q. You understood that those gentlemen's names whom you have given as having been elected on that day, among the number, James J. Hill and E. H. Harriman, had been suggested and approved by J. Pierpont Morgan?

A. I did. 2370

Q. And you voted for them upon the understanding that that was satisfactory to J. Pierpont Morgan's interests?

A. No, I voted for them for they were entirely satisfactory to me and no objection.

Q. Do you mean to say that you had no conference with J. Pierpont Morgan & Co. or any of the parties with reference to the selection of those names?

2371 A. I mean to say exactly that.

Q. How long before the meeting of July 23, 1901, did you know that those names would be presented?

A. About fifteen minutes before the meeting was assembled; it might have been five.

Q. That came to you absolutely as a new proposition at that meeting?

A. The package for the meeting was laid in front of me, and in opening the package I found the resignation of the directors and I presented the resignations to the board. I forget who nominated. As each resignation was accepted a
2372 nomination was made for the vacancy and the question was put and they were elected.

Q. And there was no opposition to any?

A. Not the slightest.

Q. Had you seen a list of the names of those who were nominated in that way?

A. I had not.

Q. Previous to the meeting?

A. No.

Q. You understood that there was some reason for the
2373 resignation of those five men and some reason for the election and appointment of those to take their place?

A. I read the newspapers regularly, and I saw this was in the newspapers.

Q. In the management and control of the affairs of the Northern Pacific and in the election of the directors of that company, do you get your information from the newspapers to the point of governing your conduct by them?

A. My conduct was not affected at all by the information in the newspapers.

Q. You didn't vote for those men on the supposition that
2374 they were hostile to the interests which previous to that time had controlled the destinies of the Northern Pacific?

A. I voted for these men because I considered them excellent men for the position and I couldn't find any reasonable objection to urge against their election.

Q. And that could have been said of hundreds of other names?

A. And I undoubtedly might have voted for a hundred

others had they been proposed and been equally unobjection- 2375
able.

Q. Did you at that time know who suggested those names?

A. Why, I had read the newspapers.

Q. Did you learn that from anybody else?

A. Only general talk.

Q. General talk with whom?

A. Everybody.

Q. Including J. Pierpont Morgan?

A. No; I don't think I met him at all.

Q. Did you meet his partners?

A. Why, they were members of the board and present at 2376
the meeting, two of them.

Q. Is it not true that at that time you had learned of a truce between the Harriman and the Hill-Morgan interests and the fact that Mr. Morgan was to nominate the directors of the Northern Pacific Railway?

A. I read it in the newspapers.

Q. Hadn't you learned it anywhere else?

A. I had had no official information of any description, except what I got through the press and by talking with Colonel Lamont and other people whom I came in contact with. 2377

Q. You voted for those five names that were nominated in the way you have detailed strictly upon their merits and without any previous understanding?

A. I had no understanding.

Q. Wait a moment. You have already testified to that, and I say you voted for them strictly upon their merits individually, without reference to any understanding that they had been suggested by J. Pierpont Morgan?

A. I think I know what you want, and I am perfectly willing to state that I supposed they were nominated by Mr. Morgan; I hadn't the slightest doubt of it, but I didn't know 2378
anything about it. Nobody told me that fact.

Q. Well, you relied upon the information that you got from the newspapers, did you, Mr. Mellen?

A. I don't think I did.

Q. You were not, of course, a mind reader?

A. Not exactly, but I voted for those men because there was no objection to them, and because I generally understood

2379 that they had been nominated in accordance with the newspaper reports by Mr. Morgan, and there seemed to be no objection on the part of anybody to their election, and there was none on my part.

Q. The partners of J. Pierpont Morgan, at least one of them, were present and taking part in the proceedings of the board?

A. I am pretty sure there were, but the record would show better than my memory.

Q. There were at that time two partners of Mr. Morgan?

A. Yes, sir; Mr. Bacon and Mr. Steele.

2380 Q. James J. Hill never had been a director of the Northern Pacific?

A. Not till that day.

Q. He was at that time president of the Great Northern Railway Company?

A. He was.

Q. At that time did you know that, under the laws of the State of Minnesota, he was not eligible as a director of the Northern Pacific?

Mr. Kellogg. That is objected to; he is not a judge of the laws of the State of Minnesota.

2381 Mr. Lancaster. I don't ask him to be. I ask him whether or not he did know of such a law in the State of Minnesota.

Mr. Kellogg. I object to it. He may have known what the statute was, if he ever read it. What the law is is a question for the court and not for Mr. Mellen to decide.

A. I was advised after the meeting that he was ineligible. Indeed, he told me so himself.

Mr. Kellogg. He declined to serve?

A. He said he should decline to serve.

Q. But he lingered until fall?

A. He didn't attend any meeting until November 13, after

2382 he had been elected by the stockholders.

Q. It was certainly a radical change in the policy of the Northern Pacific Railway Company up to that time, was it not, to place on the board the head and front of its chief rival?

A. It was certainly the first time to my knowledge that the president of the Great Northern had been a director of the Northern Pacific.

Q. You knew at that time that Mr. Harriman was the head 2383
and front of the Union Pacific interests, did you not?

A. I so understood it.

Q. And his name was among the list nominated at that meeting?

A. It was.

Q. And the Union Pacific was at that time a competitor of the Burlington, which your road had just purchased a half interest in?

A. The Union Pacific was a competitor of the Burlington.

Q. Well, that was a radical change in the policy of the 2384
road, was it not?

A. There never had been any Union Pacific man, that I was aware of, director of the Northern Pacific up to that time.

Q. The Union Pacific was also to a considerable extent a competitor of the Great Northern and Northern Pacific, was it not?

A. Well, it was a part of a line that was a competitor. The Union Pacific strictly is not a competitor.

Q. Didn't it strike you as being rather a remarkable thing, Mr. Mellen, that all at once five men should resign and five put in their places and that two of them should be the leading 2385
spirits in two rival lines?

A. It struck me as a very remarkable time and a time to do rather remarkable things.

Q. It struck you as a remarkable thing at a remarkable time?

A. It struck me as being a remarkable time and it was necessary to do something, and I supposed somebody had undertaken to do the best thing they could.

Q. You supposed and understood that there was a good reason for putting on the board of the Northern Pacific the president and a director of the Great Northern, did you not? 2386

A. I never gave the matter the slightest thought.

Q. Now, Mr. Mellen, shortly after that you learned that Mr. Harriman was elected a director of the Burlington Railroad, did you not?

A. In the same way I learned a lot of things, through the newspapers; I had no personal knowledge.

2387 Q. And, later on, he was elected a director of the railway company. You learned that fact?

A. I have learned it in the testimony here.

Q. Mr. Mellen, are you able to give the names of the gentlemen who constituted the voting committee or the voting trust of the Burlington stock?

A. I didn't know there was any, except this agreement here which you have.

Q. There is a provision for one in there. Mr. Hill didn't know.

2388 A. I will tell you this: I know when the annual meeting of the Burlington road occurred the question of representation of the Northern Pacific was referred to the executive committee, and just what action was taken by the committee I am not certain; I don't think I was present when the matter was acted upon.

Q. Mr. Mellen, when did you first learn of any proposed action with reference to the retirement of the preferred stock of the Northern Pacific Railway Company?

A. I have heard that discussed at various times during my whole connection with the property, but the question of the 2389 imminent retirement of it was discussed on or about the time of the dissolution of the voting trust, along, I should say, early in the winter of 1901, and I cannot say that it was particularly discussed then; I heard it mentioned.

Q. Well, when did you first learn of some proposed action to be taken with reference to the retirement of the preferred stock on January 1, 1902?

A. The first official information I had was, of course, the action of the board of directors. I had heard Mr. Morgan say it was going to be retired. I talked of it occasionally with various directors and asked the question if it was to be re- 2390 tired and if they were proposing to retire it, and the answer from all sources seemed to be that it would be retired on the 1st of January.

Q. Now, at that time did you understand that there would have to be issued, in order to retire that stock, $75,000,000 of certificates of indebtedness?

A. I understood there would have to be $75,000,000 raised,

and I knew there would have to be some kind of security is- 2391
sued to raise that money.

Q. What did you understand at that time was the particular reason for retiring that preferred stock?

A. It was to make the common stock more valuable and to help the corporation by getting rid of the preference which existed on the preferred.

Q. And also getting rid of Mr. Harriman?

A. I never heard that discussed.

Q. Did you hear a rumble anywhere?

A. I heard more rumbling to-day about it than ever before. 2392

Q. Didn't you read the newspapers during that time?

A. Yes.

Q. And you never heard anything about it till to-day?

A. I didn't see very much in the newspapers about it.

Q. Do you mean to say that you never heard anything about that till to-day?

A. I say I heard more of it to-day than any other time and gave it more atttention.

Q. You knew, Mr. Mellen, at that time that Mr. Harriman held, either in his own right or representing other interests, more than a majority of the capital stock outstanding of the 2393
Northern Pacific Railway Company, didn't you?

A. I never knew how much stock Mr. Harriman or people in his interest held until the publication of the annual report of the Union Pacific disclosed the fact.

Q. And that disclosed the fact that the Union Pacific held $78,104,000?

A. Substantially that. I don't mean to be understood as having no general knowledge through the press and through hearsay and all that; I had seen a great deal in the press of claims and counterclaims as to the control of the property by ownership of stock, but what the facts were I never knew. 2394

Q. Did you learn from any source outside of the newspapers as to how much stock Mr. Hill and J. Pierpont Morgan & Co. held of the common stock?

A. Only from Mr. Hill, Mr. Harriman, Mr. Morgan, Mr. Bacon, and various people; a matter of hearsay entirely.

Q. You say you did hear from them?

2395 A. Oh, certainly. I am in the habit of meeting them every few days.

Q. You understood that J. Pierpont Morgan & Co. and Mr. Hill and associates held a clear majority of the common stock?

A. I understood they claimed so.

Q. And you understood perfectly well that by the retirement of the preferred stock that Mr. Harriman and his interests would be retired from the control of the Northern Pacific Railway Company?

2396 A. I understood the moment I learned with reasonable sureness that Mr. Morgan and his friends and Mr. Hill and his friends controlled over 40,000,000 of the common stock that they controlled the company.

Q. They didn't control the company, Mr. Mellen, until the preferred stock was retired, did they?

A. Yes; but I was aware all the time from my connection with the company of the right of the company to retire the preferred stock.

Q. You understood that as a condition precedent to their controlling the road they must get rid of the preferred stock?

2397 A. That I knew they had the power to do at any time.

Q. And you knew that in order to control the company with their 40,000,000 of common stock that they must retire the preferred?

A. I knew if the prefered stock was not retired it had the right to vote the same as the common.

Q. Mr. Mellen, were you consulted by anybody with reference to the retirement or the proposed retirement of the preferred stock which was to take place on January 1, 1902, previous to the meeting of the board of directors which passed the resolution?

2398 A. I saw drafts of the resolution which were presented to the board on November 13, some time previously. I know they were submitted to me for correction and suggestion, and I knew of the proposed method of raising the money for the retirement of the stock and of the offering of rights to the stockholders to subscribe for the new securities, and was conferred with. I heard that through Mr. Bacon, through Mr. Steele, through Colonel Lamont, and through Mr. Stetson,

the counsel. I suppose you would call that conferring with 2399
me.

Q. You understood that the purpose of retiring the preferred stock was for the purpose of giving the common stock holders the absolute control of the company?

A. I understood that the retirement of the preferred stock was for the interest of the company, and I knew necessarily the result must be that the common stock would control if the preferred stock was retired.

Q. And you understood that as a part of this transaction, and in order to finance it and carry it through, an issuance of 2400
the certificates of indebtedness to the extent of $75,000,000 by the Northern Pacific Railway Company would be necessary?

A. Certainly.

Q. And you understood the provisions with reference to the subscriptions for those certificates?

A. Certainly.

Q. And with reference to their being converted into common stock?

A. Yes, sir.

Q. And the provisions with reference to turning in the common stock of the Northern Pacific in exchange for North- 2401
ern Securities Company stock?

A. I didn't know anything about that except in this general way. I had no personal knowledge. I never saw any circular. I never exchanged any stock. I have absolutely only the same knowledge that you have or any other citizen that comes in contact with people who have these transactions at heart, and through the columns of the public press.

Q. On November 13, 1901, when this meeting was held, the meeting of the board of directors approving of the retirement and authorizing the retirement of the preferred stock, 2402
didn't you know that the Northern Securities Company was organized?

A. On or about that time; whether it was organized then or not I can't say as to that. On or about that time I heard of it.

Q. Didn't you understand at that time that the Northern Securities Company was a necessary adjunct to this scheme of retirement?

2403 A. I never knew that it had anything to do with it.

Q. And you had nothing to do with the organization of the Northern Securities Company?

A. Not the slightest.

Q. Not consulted in reference to it?

A. Not the slightest.

Q. Did you own at the time of the meeting common stock in the Northern Pacific?

A. I did.

Q. Any considerable amount?

2404 A. One hundred shares, I think.

Q. And did you subscribe for the certificates of indebtedness?

A. I did.

Q. Did you convert them into common stock?

A. I did.

Q. Did you convert your common stock into Northern Securities Company stock?

A. No; I hold all of it yet. I undoubtedly shall.

Q. You are one of the very few who have not surrendered up to date?

2405 A. I have not; but I have told Mr. Hill he could have it any time he wanted it. He said it didn't make any difference; to keep it if I wanted it.

Q. He has got 152,000,000 or 153,000,000; more than enough.

A. That is true. He said he didn't care anything about it. It is a sort of sentimental matter with me to hold on to it.

Q. The same as it is with Mr. Hill to hang on to two or three million of the Great Northern?

A. Very likely. I wish my sentiment was large enough to hold that amount.

Q. Mr. Mellen, prior to May 9, 1901, had the Northern Pa-
2406 cific under contemplation any extensions of its lines?

A. Yes, I think so. It has extensions in contemplation all the time.

Q. And have the extensions, or any of those extensions that you had under contemplation prior to May 9, 1901, been abandoned by the road?

A. Not to my knowledge.

Q. And have those extensions been undertaken by the rail- 2407
road company up to date?

A. Some of them are in progress.

Q. And what has been done with the balance?

A. It is not exactly the time of year, you know, to progress with those matters; it is a little early in the season. They are still in that state that they can be taken up when the weather will permit.

Q. Has there been any action with reference to the abandonment or proposed abandonment of any of the extensions which were on tap May 9, 1901? 2408

A. I think the situation is precisely the same to-day as it was May 9, 1901.

Q. That is, there has been nothing done, do you mean?

A. Yes, there has been something done between May 9 and the close of the season. This is not the time of year, you understand, we would naturally be doing anything in the line of extensions.

Q. Wouldn't you undertake something between May and cold weather?

A. We have done a great deal; we have completed several extensions and we are at work on others. 2409

Q. Mr. Mellen, who financed the retirement of the preferred stock?

A. My recollection is the Standard Trust Company.

Q. Who paid the Standard Trust Company for financing that deal?

A. I am very sure the Northern Pacific has never paid anything up to the present time, and I am unaware of any obligation it is under to pay anything.

Q. So far as the Northern Pacific Company itself is concerned, you are sure that it has never paid anything, and you are not aware up to the present time of any indebtedness in- 2410
curred by it in that transaction?

A. That is the best of my recollection.

Q. Is it your understanding that the Standard Trust Company undertook that for nothing and carried it out for nothing?

A. I never had any understanding about that other than the contract which I signed with the Standard Trust Com-

2411 pany. That constitutes all the understanding I have in the premises.

Q. That was a transaction, was it not, primarily of the Northern Pacific Railway Company?

A. Yes.

Q. And didn't you as president of the company make any inquiries as to the expense of the part being taken by the Standard Trust Company?

A. That was a matter handled during my absence from New York and by members of the executive committee, and
2412 the contract required my signature as president and was approved in due form by counsel and the committee and I executed it. I had nothing to do with the transaction whatever; never met an officer of the Standard Trust Company.

Q. And the matter of the expense of financing that deal never has been called to your attention as president of the company or otherwise?

A. It never has reached my attention. I do not mean to be understood as saying there may not have been expense in connection with that transaction, but I mean to be understood as saying they have not been called to my attention.

2413 Q. Mr. Mellen, do you know who financed the Burlington purchase?

A. J. P. Morgan & Co., I think.

Q. Do you know what they received for that undertaking?

A. I couldn't recall; I don't recall.

Q. Do you know that the Northern Pacific paid half of the expense of that proceeding?

A. I am very sure they did.

Q. Can you ascertain the amount of that?

A. My impression would be that would be in New York, that information.

2414 Q. I suppose you mean by that the assistant treasurer?

A. It naturally would have been handled by the vice-president, in New York. It was a transaction at that end.

CROSS-EXAMINATION.

By Mr. Kellogg.

Q. Why did you approve of the purchase of the Burlington?

A. I thought it was a good thing for the Northern Pacific.

Q. Mr. Mellen, is there any difference in the management of 2415
the Northern Pacific road before and the management since the organization of the Northern Securities Company?

A. None whatever.

Q. Or any difference in the management of the Northern Pacific and its policies before and since the time Mr. Harriman was put on the board?

Mr. Lancaster. You have opened up something we have not gone into at all.

A. I know of no change.

Q. Well, was there any understanding?

A. None that has come to my knowledge. 2416

Q. Speaking about competition, Mr. Mellen. Now, take between the head of the lakes and Minneapolis and St. Paul, the rates of the Great Northern and the Northern Pacific are the same, are they not?

A. Yes.

Q. Must be the same?

A. Yes.

Mr. Boutelle. That is objected to as incompetent, irrelevant, and immaterial, and I move to strike out the answer.

Q. You said there was active competition. Do you mean 2417
by that each road is struggling to get all the business it can?

A. Yes.

Q. And that competition is active to-day, is it?

A. Yes, sir.

Q. Now, is it possible in railroad management for the rates between the same points to be different over one line from another line between the same points?

Mr. Boutelle. The same objection.

A. Yes; if you want the business all to go by the line with the lowest rate.

Q. If each company does business, the rates have to be the 2418
same?

A. Substantially the same.

Q. As between all competing points between the Northern Pacific and the Great Northern the rates are the same, are they not?

A. They are.

2419 Q. And have always been the same since you have been there?

A. So far as I know.

Q. Then you mean by competition each line is struggling by soliciting business and getting business to get all it can?

A. Yes; offering superior facilities and bringing pressure to bear and influence, personal and otherwise, and every way you can.

RE-DIRECT EXAMINATION.

2420 By Mr. Boutelle:

Q. Do you mean to say that the conditions that you have just testified to were due to business conditions, to natural conditions, or to agreements and understandings reached between traffic managers and officials of the lines?

A. Both.

Q. Well, isn't the main factor in the conditions you have testified to the fact that the roads, for the purpose of preventing competition, have made a tacit agreement to maintain certain rates?

2421 A. No.

Q. That is not the fact?

A. No.

Q. Did you hear the testimony taken before the Interstate Commerce Commission?

A. I did.

Q. Did you hear the testimony of Darius Miller, who was the vice-president formerly of the Great Northern?

A. I did.

Q. Did you hear Mr. Miller testify that rates were demoralized during 1901 and came together during the fall?

2422 A. Yes.

Q. Was that the fact?

A. I don't know.

Q. Isn't it frankly the fact that rates are demoralized?

A. Yes; not particularly so in the territory served by the Northern Pacific.

Q. Isn't that because they have usually had an agreement and understanding to maintain rates?

A. There is no agreement except a general conference we 2423
have to have with everybody that does a competing business. We have to know what our neighbors are doing.

Q. I don't mean a formal agreement, but a tacit understanding as to rates.

A. There is only the general understanding that nobody will do anything that affects his neighbor unfavorably without advising the neighbor before doing it, and that agreement is no different with the Northern Pacific and the Great Northern than it is with the Northern Pacific and the Chicago and Northwestern, or any other railroad connecting, com- 2424
petitive, or otherwise.

Q. I understand that, but the basis of those conditions is this general agreement or understanding to which you have testified?

A. There is no general agreement or understanding, if you mean by an understanding any agreement by which any party is bound for five minutes.

Q. I do not at all. I mean that those conditions are due to the fixing of rates by mutual understanding.

A. No.

Q. What do you mean by understanding, a contract? 2425

A. No; we have no contracts.

Q. Are not the rates, and have they not been for a number of years between the Northern Pacific and the Great Northern, understood between those companies and maintained to a certain given point?

A. The rates between the Northern Pacific and Great Northern are frequently misunderstood, I am very sorry to say, to the detriment of both companies and the public, and I find no difference in the conditions to-day from what I found when I came here, and I don't expect there will be any difference in the conditions if I should stay here for 2426
ten years to come.

Q. I will ask you whether or no the foundation for the rates and the maintenance of the rates is not due to a tacit understanding or agreement or conference, whatever you may term it, between the officials of the lines to keep the rates up?

A. No. I should attribute it to the better judgment of rail-

2427 road managers to-day as compared with the days when different customs prevailed.

Q. When different customs prevailed each road mapped out its own rates and proceeded its own independent way, didn't it?

A. I don't know. I have been railroading for thirty-three years and I don't know of any difference in the way of doing business to-day from when I started.

Q. What did you refer to a few moments ago when you said the old way?

2428 A. The better judgment of men. They have found that they must do business, as they must live, in good-fellowship with their neighbors.

Q. What does good-fellowship consist in?

A. In being decent and behaving themselves.

Q. And one step further, in maintaining rates, doesn't it?

A. Why, yes, in this sense. It means maintaining rates, that they shouldn't cut rates, make secret cuts; but there is no understanding or agreement to prevent any railroad from putting out a tariff that the judgment of its officers felt was necessary; but there is that courtesy among officers to-day

2429 that didn't exist; that if we were to put out a tariff to-morrow that affected my neighbor, before that became effective I would courteously notify my neighbor I contemplated such action.

Q. And that is precisely, in a general form, what the railroads have been attempting to do by specific agreements for and during the last eight or ten years, isn't it?

A. I don't know.

Q. You were familiar with the Trans-Missouri Traffic Association?

A. I used to be a member of it.

2430 Q. You knew something about the detail of that agreement?

A. Yes.

Q. Now, in a general way, while not carried out in the same amount of detail, this good judgment that you speak of and good-fellowship is practically the same thing so far as rates are concerned, isn't it?

A. I don't think so. There, under that agreement, if there

was to be a change in rates, all the parties had to get together and confer, and if one party objected the rate could not go in. 2431

Q. I am asking you about results, not the minor details. Doesn't it result in the same?

A. The results to-day are a great deal better than they used to be.

RE-CROSS EXAMINATION.

By Mr. Kellogg:

Q. The rates, of course, have to be published? 2432

A. Yes.

Q. And you have to publish those rates a certain time before they go into effect under the law?

A. Yes.

Q. Do you know of any way that the Great Northern can have a published tariff or have a rate that is less than the Northern Pacific between two common points and the Northern Pacific get any business?

A. No, I don't know how it can be done.

Q. Isn't it a positive necessity that makes rates between the same termini of competing railroads the same? Isn't it a positive necessity? 2433

A. Yes.

City of St. Paul, Federal Building, December 16, 1902.

The hearing was resumed on this day before the Special Examiner, at 10 A. M., all parties being represented.

DARIUS MILLER, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows: 2434

DIRECT EXAMINATION.

By Mr. Munn:

Q. You have been engaged in the railroad business for some years?

A. Yes, sir.

2435 Q. Were you formerly with the Great Northern Railway Company?

A. Yes, sir.

Q. In what position?

A. As second vice-president of the Great Northern.

Q. How long did you occupy that position?

A. From November, 1898, to January 1, 1902.

Q. As second vice-president of that company what were your duties?

A. I was in charge of the traffic of the road.

2536 Q. That is, freight largely?

A. Freight and passenger traffic.

Q. Both?

A. Yes, sir.

Q. When you say you were in charge of the traffic of the road, do you mean that you had the fixing of rates?

A. Yes, sir.

Q. For both freight and passenger business along the entire system of the Great Northern Railway Company?

A. Yes, sir.

Q. Did you have that responsibility yourself, or did you
2437 consult with Mr. Hill before fixing or changing rates, either passenger or freight?

A. It was all subject, of course, to the president.

Q. To his approval?

A. Yes, sir.

Q. That is, you didn't feel that you had authority to make or change rates in any important matter without first consulting the president and receiving his approval?

A. Yes, sir.

Q. You are familiar, I suppose, with the Great Northern system, from its beginning at St. Paul to its termination on
2438 the Pacific coast?

A. In a general way, yes, sir.

Q. While you were occupying the position of second vice-president did you have occasion to go over the relations of the Great Northern Railway Company with the Chicago, Burlington & Quincy Railway Company and the making of joint rates with that company for and on behalf of the Great Northern?

A. We made joint rates with the Burlington, yes, sir. 2439

Q. Now, in case of a shipment from any point on the Burlington system to a point on the Great Northern, would the Great Northern have an arrangement with the Burlington by which the rate of freight or the passenger rate would be fixed from the point on the Burlington to the point on the Great Northern?

A. The rates were made by agreement with the Burlington road from time to time.

Q. That is, the rate would be specified from the point on the Burlington to the destination on the Great Northern? 2440

A. Yes, sir.

Q. How would you divide that freight rate or passenger rate between the two roads? On a mileage basis, or what?

A. That varied. Some were on a mileage basis, some were on an arbitrary percentage, and others sums of locals.

Q. But there was always a division upon either a mileage basis, an arbitrary percentage or local rate?

A. Yes, sir.

Q. And that was always subject to an agreement between the Burlington road and the Great Northern?

A. Yes, sir. 2441

Q. I suppose there were many points along the Great Northern where the Northern Pacific met the Great Northern in competition or were junction points, so that in case the freight came over the Burlington road it could come either over the Northern Pacific or the Great Northern reaching the same destination?

A. I think they usually carried the same rates between the same points.

Q. In such cases were the rates always the same on both roads?

A. As far as I remember, yes. 2442

Q. Would you not sometimes make a rate on your road different or lower than on the Northern Pacific so as to get that business?

Mr. Grover. What do you mean—joint rate?

Mr. Munn. No; make a rate with the Burlington lower than the rate for the same commodity on the Northern Pa-

2443 cific, for the purpose of securing that business from the Burlington.

A. No, sir.

Q. What?

A. No, sir. The tariff rates were uniform.

Q. The tariff rates were uniform, but did you not, while you held your position with the Great Northern, occasionally change the tariff rate so as to secure that business, make it lower than it was on the Northern Pacific or lower than it had been on both roads prior to that time?

2444 A. It may be that rates were not always maintained.

Q. Well, is it not a fact, Mr. Miller, that they were not, in that you did sometimes, and frequently, make changes in your tariff rate for the purpose of securing the business from the Burlington road?

A. No, I think not.

The above question was objected to by the defendants on the ground that the question is ambiguous, it not appearing whether it means that he made an open change in the tariff or secretly cut the tariff rate.

Mr. Munn. Well, I refer to both.

2445 Witness. I know of no open changes in tariff rates.

Q. Did you not make changes that were not shown by the tariff for the purpose of securing that business?

Objected to by defendants as incompetent, irrelevant and immaterial.

A. There may have been some cases of that kind.

Q. And that was done (whenever it was done) for the purpose of securing the business which came from points along the Burlington road or the Burlington system?

A. Yes, sir.

Q. And such changes were made at junction points of the
2446 Northern Pacific and the Great Northern?

A. Yes, sir.

Q. Now, since January, 1902, what position have you held with any other road?

A. I have been vice-president of the Burlington road.

Q. Also its traffic manager, in charge of its traffic?

A. My title is vice-president in charge of traffic.

Q. That is, you hold the same position with the C., B. & Q. 2447
now that you formerly held with the Great Northern?

A. Yes, sir.

Q. And you have held such position since January 1, 1902, or about that time?

A. Yes.

Q. Your duties there are substantially the same as they were before on the Great Northern?

A. Yes, sir.

Q. From whom did you first receive any request or suggestion that you take the position with the Burlington road 2448
and give up your position with the Great Northern?

A. I think that I was first told by Mr. Hill.

Q. Did he tell you at that time that your duties would extend in any way to the traffic business or the fixing of rates between the Burlington and the Great Northern and Northern Pacific?

A. No, sir.

Q. What?

A. No, sir.

Q. Just what did he say in that connection, Mr. Miller?

A. I couldn't recall just the words he used. 2449

Q. Just as near as you can.

Mr. Grover. You assume that he said something.

Mr. Munn. The witness said that Mr. Hill said something.

Mr. Grover. No, he didn't. He didn't say Mr. Hill gave him any directions of any kind.

Q. What did Mr. Hill say to you when he suggested that you make this change?

A. He said that he expected I would have to go to the Burlington road as vice-president in charge of traffic. He talked to me several times about someone for that place and finally said he thought I would have to go. 2450

Q. What were these talks you had with him about it?

A. There was no discussion of it except as to going there.

Q. Yes, but you say he said several times he would have to get somebody. What did he say?

A. He said he would have to get somebody. That is all he said.

Q. Just that and nothing more?

2451 A. Practically, yes.

Q. That he would have to get somebody for that place,—was that his language?

A. No; that the Burlington would have to get someone for that place, and he spoke of several parties for it.

Q. He spoke of several parties for it?

A. Yes, sir.

Q. When did he first suggest your taking it?

A. I think it was along in November.

Q. Of what year?

A. Of 1901.

2452 Q. Well, now, state as near as you can just what he said then.

A. That was all he said; that the Burlington was looking for someone to take charge of the traffic, and asked me to suggest someone, and finally told me that he guessed I would have to go.

Q. Did you finally make your arrangement to go, with him? Was the arrangement made with him, finally, that you should go?

A. The first notice I got of it was from the secretary that I
2453 was elected vice-president of the Burlington road; I got simply a circular letter.

Q. How long after you were told by Mr. Hill that he guessed you would have to go?

A. Last of November, or some time in November.

Q. Very shortly before you went?

A. Yes, sir.

Q. How many talks did you have with Mr. Hill regarding someone to fill that position before he suggested your going?

A. I don't recall.

Q. Did he ask you in those conversations to suggest some-
2454 one for the place?

A. Yes, sir.

Q. State what he would say when he would make that suggestion.

A. Well, there was very little conversation about it; merely asked for a suggestion.

Q. And finally said he guessed you would have to go and take it?

2455

A. Yes, sir.

Q. Did he say at that time that he didn't know of anybody else who would be satisfactory but you, or anything to that effect?

A. No, he didn't say that.

Q. Well, at that time did you have any talk with him, or at any subsequent time, regarding your duties in this position so far as they might affect the Northern Pacific and the Great Northern?

A. No, sir.

Q. Did he say anything to you about salary at that time? 2456

A. Not at that time, no.

Q. Did he subsequently?

A. Not until about the time I left here to go down there.

Q. What did he say then?

A. He told me he had spoken to Mr. Harris about my salary.

Q. Of course, when you refer to Mr. Hill, you refer to James J. Hill who is president of the Great Northern Railway Company?

A. Yes, sir.

Q. Did he say that you would get the same salary you were 2457 getting with his road, or anything to that effect?

A. I prefer not to say what salary I get.

Q. I don't ask you to say that. I say did he say you would get the same salary?

A. He said it would be made satisfactory to me, that is all.

Q. Was anything said about your severing your connection with the Great Northern Railroad besides being transferred down there?

A. Nothing more than he said he was sorry he would have to part with me. He was very kind about that. Jollied me up 2458 a little.

Q. Now, Mr. Miller, after you got down there did you consult with Mr. Hill regarding rates on the C., B. & Q.?

A. No, sir.

Q. Never have?

A. No, sir. Never discussed C., B. & Q. rates with him in any way.

Q. Never discussed the matter of rates on the Burlington road with Mr. Hill at all?

2459 A. No, sir?

Q. Did you receive any letters or directions or suggestions from him regarding rates on the Burlington road?

A. None whatever.

Q. Now, since you have been with the Burlington road what has been its system of delivering freight to either the Great Northern or the Northern Pacific destined for junction points on those two roads in Minnesota?

A. I don't quite understand what information you want.

The question was read to the witness.

2460 A. There has been practically no change in the routing of freight.

Q. Freight which is delivered to or secured by the Burlington system at any of its points, destined for junction points on the Northern Pacific and Great Northern in Minnesota, who determines over which road it shall go?

A. If it is routed by the shipper, it goes as routed. The unrouted freight we endeavor to divide according to the amount of freight we receive from the other company.

Q. According to what?

A. According to the tonnage we receive from them.

2461 Q. From the Northern Pacific and the Great Northern?

A. Yes, sir.

Q. That is, where it is left to the Burlington road to determine the route, you simply determine it regardless of any request from the Northern Pacific or the Great Northern?

A. Yes, sir. We divide it according to what we get from them, proportionately.

Q. In proportion to what you get from them?

A. Yes.

Q. In other words, there is no effort on the part of the Northern Pacific or the Great Northern, as against each other,

2462 to secure that business?

A. They are both working to get it routed.

Q. Who works to get it routed?

A. Their soliciting agents. They have the same soliciting force they have always had.

Q. But you disregard that?

A. No, sir; I said when it was unrouted freight, when the shipper had not designated the route.

Q. When you receive freight, the routing of which is left 2463
to the Burlington road or to you, destined to junction points on the Northern Pacific and Great Northern in Minnesota, you determine over which road shall go, do you?

A. Yes, sir.

Q. And you say that you divide it on a basis proportionate to the freight you receive from those two roads?

A. Yes, sir, that is correct.

Q. Well, how do you determine the amount of freight you receive from those two roads?

A. We have our monthly statistics or reports showing just 2464
what freight we receive from each one of these roads; not only from them, but from any other road.

Q. Well, since you have been with the Burlington road, do you know of any cutting of rates, or any change or reduction in rates by either the Great Northern or Northern Pacific for the purpose of securing business from the Burlington road?

A. No, sir.

Q. Now, where the freight is unrouted by the shipper and it is left to the Burlington road to determine the route, is there any effort made by either the Great Northern or Northern Pacific to secure that business from the Burlington road, or is 2465
that left to you?

A. They always pester me about it, both of them.

Q. In what way do you mean?

A. Each one thinks that it is not getting enough.

Q. Have you any letters to that effect from either one of these companies?

A. Yes, sir.

Q. From whom did you get those letters?

A. Mr. Blabon and Mr. Hannaford.

Q. Mr. Blabon is the traffic manager of the Great Northern and Mr. Hannaford is the traffic manager of the Northern 2466
Pacific?

A. Yes, sir.

Q. What do they request—that they receive more freight, or what?

A. Each one thinks we are giving the other fellow the best of it, giving him too much.

Q. That is, they think each road is not getting as much freight as it ought to get?

2467 A. Yes, sir.

Q. But that relates to the quantity of freight all the time, and not to the rate?

A. Yes. Oh, they sometimes charge the other fellow with cutting the rate—charge each other.

Q. The roads sometimes charge each other with it?

A. Yes, sir.

Q. Have you got any letter to that effect?

A. Yes, sir.

Q. From whom did you get such a letter?

A. From both the gentlemen referred to.

2468 Q. What time? Will you give us about the date of those?

A. No, I can't give you the dates.

Q. Well, about what time?

A. I have had some, I think, very recently.

Q. From both Mr. Blabon and Mr. Hannaford?

A. No; I think I have had one very recently from Mr. Hannaford.

Q. Considerable was said in some of the testimony given in the federal case about coal shipped from along the line of the Burlington road to the Great Northern and Northern Pa-

2469 cific, destined for junction points in Minnesota. Do you do much of that business?

A. Coal?

Q. Yes.

A. We are doing quite a little coal business now, yes, sir.

Q. Who determines the route on that, where it is destined for junction points on these two roads, the Northern Pacific and Great Northern?

A. It is very largely routed by the shippers. It is very largely determined by the coal yard where it is located.

Q. That is shipped right through to the point of destina-

2470 tion——

A. Yes, sir.

Q. —on either the Great Northern or Northern Pacific?

A. Yes, sir.

Q. Now, where those are at junction points on those two roads, is there any effort made by the shippers to secure a reduced rate?

A. Yes, sir, always.

Q. Who is that made to? 2471

A. It is made to the initial line sometimes, and sometimes to the terminal line.

Q. When you get such a request what do you do with it?

A. We act on it, as far as we are concerned.

Q. I know, but it is coming over your route anyway?

A. Not necessarily. It may not necessarily come over our road. Nearly all the coal is competitive, you know; there is practically none of it local.

Q. Well, you have some local coal, do you not?

A. Very little,—that comes up here. 2472

Q. What?

A. Practically none that comes up here.

Q. I understood that you did have some (soft coal) that came up here, which was mined along the Burlington road.

A. Well, it is nearly all at junction points.

Q. What?

A. It is nearly all in competitive territory.

Q. When you say in competitive territory, you mean that there are other roads than your own road to the mine?

A. Yes, sir.

Q. When there is a request made for a reduced rate on coal 2473
to be shipped over your road and destined for junction points, on the Northern Pacific and Great Northern, who determines whether or not there shall be a reduced rate for the entire distance?

A. We determine it as far as our interests go, whether we will make any reduced rate, or ask our joint connection to join us, if we decide it is necessary.

Q. Now, have you, during the time you have been with the Burlington road, had occasion to reduce the rate at all?

A. Not on coal.

Q. Have you on any other commodities? I am speaking 2474
now of freight that is destined for junction points on the Northern Pacific and Great Northern in Minnesota.

A. In Minnesota?

Q. Yes.

A. I don't recall of my having taken up any such cases.

Q. Well, do you know of any such cases, whether you took them up or not?

2475 A. Not that I know of now, no, sir.

Q. Outside of the State of Minnesota where the Great Northern and Northern Pacific pass through the state or destined for junction points on those two roads outside of the state?

A. There have been some reductions made to the western territory, yes, sir.

Q. To what points?

A. Spokane, Seattle and Portland.

Q. That is where you are in competition with some of the other Pacific coast roads?

2476 A. The Northern Pacific, the Great Northern, the Canadian Pacific and the Union Pacific are in that territory very largely.

Q. Now, whenever you have occasion to make such a reduction, with whom do you consult on the Northern Pacific and Great Northern about making it on those lines?

A. Those are generally taken up at a conference of all the lines interested.

Q. Where such a rate is made, is the same rate made over the Northern Pacific and Great Northern where they reach a junction point?

2477 A. Yes, always.

Q. So that, so far as the Great Northern and Northern Pacific are concerned, it would be left on an even basis as to the shipper?

A. Yes, sir.

Q. And he would take his choice?

A. Yes, sir.

Q. I suppose you have a great deal of freight which is shipped over the Burlington system destined for competitive points on the Great Northern and Northern Pacific, do you not?

2478 A. Yes, sir.

Q. Both inside and outside of the State of Minnesota?

A. Yes, sir.

Q. In all cases the rate between your company and the Great Northern and the Northern Pacific is equal, to those junction points?

A. Yes, sir.

Q. And it has always remained so since you have been 2479
there?

A. Yes, sir.

Mr. Grover. The published tariffs show that they are the same on every railroad.

Q. Since you have been there there has been no cutting of those rates, that you know of? I mean by the Great Northern and the Northern Pacific?

A. No, sir, I think not.

Mr. Grover. They have been enjoined from it by the United States. They could not if they wanted to. 2480

Mr. Munn. Yes, I understand.

Q. Do you know of any change that has been made in the rates, so far as the Great Northern and Northern Pacific are concerned, for business received from your road destined for junction points on those two lines (Great Northern and Northern Pacific) since you have been with the Burlington?

A. In Minnesota?

Q. Yes, in Minnesota or outside.

A. I don't recall any changes to Minnesota now; there may have been.

Q. You know of none? 2481

A. I don't recall any now, no.

Q. I suppose that the Burlington system is in competition with the Union Pacific and the Canadian Pacific for certain points reached by both the Great Northern and Northern Pacific Railways on the Pacific Coast. Where it is necessary to make any arrangement with other roads in competition with those points as to change in rate, who has transacted that business,—consulted and made the changes?

A. The traffic officers.

Q. Yourself?

A. In some cases I have taken them up; in other cases 2482
our freight traffic manager has taken them up.

Q. In such cases as you have taken them up, have they been cases involving the rate over both the Burlington and the Northern Pacific and the Great Northern?

A. Yes, sir.

Q. In those conferences who has acted for the Great Northern and the Northern Pacific?

2483 A. We have acted jointly.

Q. I know, but who would act for the Great Northern and the Northern Pacific? For instance, if a conference was held between the Union Pacific and the Canadian Pacific for the making of a rate from some point along the Burlington line to points on the Pacific Coast competitive between the Great Northern and the Northern Pacific and these other lines, who would represent the Great Northern and the Northern Pacific in making the rate which was to exist between your road and those two?

A. I have sometimes represented them.

2484 Q. All three of them?

A. Yes, sir.

Q. That is, in such conferences you have represented the Great Northern, the Northern Pacific and the Burlington where it affected the rate over the three systems?

A. Where it was a joint rate, yes, sir.

Q. And would you determine that rate yourself, or would you report to someone and get the approval of someone before fixing it?

A. I had either full knowledge of their views or got their

2485 approval of it afterward.

Q. Whose approval would you get?

A. Mr. Hannaford's or Mr. Blabon's.

Q. Did you consult Mr. Hill in those matters at all?

A. No, sir.

Q. But you would go ahead and act in those conferences for the three roads?

A. Occasionally, when I was requested.

Q. Some of those arrangements, of course, were rather important not only to the Great Northern and the Northern Pacific, but also to the Burlington?

2486 A. Not more than the usual joint rates are.

Q. Well, take the cattle business, for instance, or the lumber business which would come from the Pacific coast to points along the Burlington road, or the grain or cotton business which would come to or from the Burlington road by either the Northern Pacific or the Great Northern from those points on the Pacific coast competitive with the Union Pacific or the Canadian Pacific, I suppose the determination of

the rates on those commodities or other commodities, large 2487
quantities of which were shipped over those roads, was rather important to the roads?

A. Certainly.

Q. Would you act in those matters for those roads?

A. Yes, sometimes, the same as we would for any of our connection.

Q. At the time or just prior to the time you went with the Burlington road, there was considerable talk regarding a traffic manager for the Great Northern and Northern Pacific and the Burlington road being located in Chicago, was there 2488
not?

A. There was in the newspapers, that is all I know.

Q. Was there in fact?

A. No, sir.

Q. You never heard any such talk?

A. No, sir.

Q. Did you have any such talk with Mr. Hill?

A. No, sir.

Q. Were any orders issued by the Burlington road, the Great Northern, or Northern Pacific regarding cars about the time that you went with the Burlington road, or shortly prior 2489
to that time, to the effect that any Great Northern or Northern Pacific car which reached a junction point on the Burlington road, or any car of the Burlingfon road which reached a junction point between that road and the Northern Pacific or Great Northern should be deemed the car of such road reaching the junction point for the purpose of transportation?

A. I don't believe I understand that.

Q. Perhaps I don't make it clear. Was there any order issued by these three roads I have named, or any arrangement made between the three roads, to the effect that a Burlington car, when it reached either the Great Northern or Northern 2490
Pacific at a junction point between either or both of those roads and the Burlington road, should be deemed a Great Northern car or a Northern Pacific car to be transported over those lines?

A. I know of no such order; I never heard of it.

Q. Never heard of any such order?

A. No, sir.

2491 Q. Well, wasn't such an order issued and then revoked?

A. Not to my knowledge.

Q. You understand what I mean by that question?

A. Yes, sir. I have no knowledge of such an order.

Q. Such an order would mean that such a car should be transported over either the Great Northern or Northern Pacific providing it was one of their cars?

A. Yes, sir.

Q. In case any other road had brought a Burlington car to a junction point with the Great Northern and Northern Pacific and some other road, was there an order to the effect
2492 that such car should be deemed a Great Northern or Northern Pacific car for transportation?

A. I know of no such order.

Q. Do you know whether any such order was ever made?

A. I do not.

Q. You say that while you were with the Great Northern Railway Company you would not make any order which affected the rate for either freight or passenger business without first consulting Mr. Hill and receiving his approval.

Mr. Young. That is objected to. The witness never said so.

2493 Mr. Munn. I so understood him.

Witness. What I meant to say——

Q. I mean any important change.

A. Everything was subject to Mr. Hill's approval. Very few things he went into. All important acts were subject to Mr. Hill's approval, generally, but he very rarely took up all the details.

Q. I understood you to say, Mr. Miller, that you would not make any important change in a freight rate or a passenger rate, while you were with the Great Northern Railway Company, without submitting it to Mr. Hill and receiving his ap-
2494 proval.

A. It would depend on what you call *important*, of course.

Q. A substantial change.

A. A change in any of our ordinary tariff rates on commodities I would not consult him about, of course. If we wanted to change our whole tariff basis, I would get his approval; but I would not get his approval to make a change in the tariff or rate.

Q. You wouldn't make any change that affected any im 2495
portant matter?

A. I would not change the general policy or change the whole basis of our tariff without his approval, no.

Q. You wouldn't make any change on an important commodity?

A. Yes, sir.

Q. Without consulting him?

A. Yes, sir.

Q. For instance, would you reduce the rate on wheat without consulting him? 2496

A. Not generally, no.

Q. Would you on flour and lumber?

A. Yes, sir.

Q. You would?

A. Yes, sir.

Q. Who do you consult on the Burlington road about making any changes in tariffs or rates prior to putting them into effect?

A. Mr. Harris.

Q. Anybody else?

A. No, sir.

Q. Mr. Harris is the president of the road? 2497

A. Yes, sir.

Q. Have you ever talked to Mr. Hill about any such changes?

A. Never.

Q. Never have had any conversation with him about those at all?

A. No, sir.

Q. Never consulted Mr. Hill regarding the policies which come under your supervision or control in the Burlington since you have been there? 2498

A. No, sir.

Q. Ever consulted with him or talked with him about methods of securing business or doing business on the Burlington road?

A. No, sir.

Q. You never had any talk with Mr. Hill at all?

2499 A. Not about those things, no.

Q. Had any conferences with him since you have been on the Burlington road?

A. Met him quite a number of times.

Q. About what? I mean in a business way, of course.

A. Glittering generalities.

Q. Glittering generalities?

A. Yes.

Q. Nothing else?

A. Nothing in relation to the details of the business.

Q. What do you mean by "glittering generalities?"

2500 A. Everything.

Q. Have you had any conferences with him, or consulted with him at all, about your position or your duties or the business that the Burlington road is doing?

A. Talked about our earnings and about our expenses and what it costs us to do business. Discussed those things very freely.

Q. What would be the occasion of such discussions?

A. He was interested, of course. A director of the road.

Q. Would you come up here to see him about them?

2501 A. No, sir.

Q. How did you come to talk that over with him?

A. I have met him in New York, and I have met him in Chicago, and I have met him here.

Q. What would be the extent of those conversations?

A. I couldn't repeat them.

Q. No, but in substance.

A. He gets our reports, and he would talk about them, comment on them.

Q. Now, when you say "comment on them," what did he say about them?

2502 A. Mostly about our operating expenses.

Q. That is, he was complaining about the cost of operation?

A. Yes. Didn't think we were doing very well.

Q. Directing or requiring that you reduce operating expenses?

A. No; he said we ought to do better.

Q. Said you ought to?

2503

A. Yes.

Q. Did he ever say you *must*?

A. Well, it amounts to about the same thing.

Q. When Mr. Hill says you ought to, you understand that means you must?

A. Not necessarily. Substantially.

Q. That is about the effect of it, isn't it?

A. About the effect of it, yes.

Q. And you so understood it in your official position there? Is that right, Mr. Miller?

A. Well, of course I had nothing to do with the operating 2504
expenses. That is not in my charge, anyway.

Q. Well, how did he come to be talking over those things with you, then?

A. He was interested, and always talks about them.

Q. If you had nothing to do with them how did he come to be talking them over with you?

A. Well, he would talk with you about them if you went down there to see him, I think.

Q. Has he ever written any letters to you or to the Burlington road, that you have seen, on that subject?

A. I haven't had a letter from him since I have been there, 2505
on any subject.

Q. Have you seen any that he has written Mr. Harris?

A. I think I have seen one or two.

Q. Did you see one written some time last spring or early part of the summer regarding this very question of the reduction of operating expenses—a letter written to Mr. Harris?

A. Yes, sir.

Q. About what date was that letter?

Mr. Grover. We have it here.

A. In July some time. 2506

Q. Mr. Harris showed that letter to you, I suppose?

A. Showed it to me yesterday for the first time, I think.

Q. Didn't you talk that over with Mr. Harris before yesterday?

A. That letter?

Q. Yes.

A. No, sir.

2507 Q. Did you know such a letter had been written, before yesterday?

A. I didn't know that particular letter had been written.

Q. Well, you mean that you knew others had been written?

A. I have seen one or two other letters, yes, sir.

Q. About what dates were those? Along about the same date, or just prior to it?

A. Well, prior and since, I think.

Q. Now, in your talks with Mr. Hill about the reduction of operating expenses, what did he say? Give it as near as you can.

2508 A. Why, simply compared our operating expenses with those of the Great Northern, and indicating that we ought to be able to do our work as cheaply as the Great Northern.

Q. You mean he told you to make such comparisons?

A. No, he made them himself and showed them to me.

Q. Compared them with the Great Northern?

A. Yes.

Q. What did he say about your operating expenses?

A. He said they were too high.

Q. What did he say about reducing that?

2509 A. He said we ought to do it.

Q. What?

A. He said we ought to watch it and get after it and do it.

Q. Did he ever say that he wanted you to do that?

A. Not to me.

Q. What?

A. I had nothing to do with it. He would hardly say that to me.

Q. Well, did he ever say that to you?

A. No.

Q. Were you ever in conference with Mr. Harris and Mr.

2510 Hill on that subject?

A. No, sir.

Q. Now, Mr. Miller, to come back to the division of freight between the Great Northern and Northern Pacific received from the Burlington road,—on what basis would you divide it? What do you mean when you say that you would deliver freight which was received by the Burlington road and unrouted by the shipper in proportion to the amount

that you would receive from the Great Northern and North- 2511
ern Pacific?

A. Well, if the Great Northern road gave us as much business as the Northern Pacific, we would divide our return business equally. The Northern Pacific and Great Northern business, of course, jointly is 100 per cent. If we received an equal amount from each of them we would give each in return an equal proportion.

Q. Now, do you mean an equal amount received from all points along the two systems, or from any given point? Take, for instance, Duluth. 2512

A. All points.

Q. All points?

A. Yes, sir.

Q. Assuming then, that you take the Great Northern and Northern Pacific as being represented by 100 per cent from the entire systems of both roads——

A. Yes.

Q. —and you had, we will say, 50 per cent of the shipments that you receive destined along either one of those roads to competitive points, which was destined to Duluth, and not routed by the shipper, you would divide the Duluth business 2513
equally between those two roads?

A. Yes, sir.

Q. Regardless of where you got your business from them on the other points?

A. Yes, sir.

Q. In such case you didn't take into consideration the length of haul by the Northern Pacific and Great Northern, did you?

A. No, sir.

Q. You divided the bulk? 2514

A. Yes, sir.

Q. The bulk of the shipment, and not the rate of shipment?

A. Yes, sir.

Q. Or the rates received?

A. Yes, sir.

Q. So that your division, as far as earnings are concerned, might be very unequal?

2515 A. It possibly might, but it wouldn't be apt to work out that way.

Q. You get a great deal from the Northern Pacific, do you not, at Billings?

A. Yes, sir.

Q. And that comes from the Pacific coast over the Northern Pacific?

A. Yes, sir.

Q. And that is a long haul from the Pacific coast to Billings?

2516 A. Yes, sir.

Q. How many times longer is it than from St. Paul to Duluth?

A. Ten times longer.

Q. Now, you never considered the amount that either the Great Northern or the Northern Pacific had earned in fact from the delivery of freight received by your road and unrouted by the shipper, in making up the division?

A. No, sir.

Q. Have you ever received any complaint from the Great Northern and Northern Pacific on account of that?

2517 A. No, sir. That averages itself usually.

Q. Do you mean to say that dividing the bulk of freight regardless of points of destination will equalize the amount to be earned?

A. Yes, sir.

Q. Where the variation is as great as ten or fifteen times?

A. Yes. They get their percentage of the coast business. We would not pick out the short haul and give it to one road and the long haul to the other.

Q. Do you keep a tabulation, and divide it?

A. No, sir, but they get some of each.

2518 Q. And that is always left to your road to decide?

A. Yes, we would control that. The line that originates it controls it.

Q. At what point in the West does the Great Northern strike the Burlington system?

A. In the West?

Q. Yes; I mean in the Pacific Coast business. Any point?

A. No, sir.

Q. So that all of the Pacific Coast business which comes via 2519
Billings comes over the Northern Pacific?

A. That which comes by Billings, yes.

Q. I mean the Pacific Coast business.

A. All that comes to us at Billings comes by the Northern Pacific, yes.

Q. Do you strike either one of those systems at any point, until you get to St. Paul or Minneapolis?

A. No, sir.

Q. Business that is routed to or from the Pacific Coast or the Pacific Coast states, either destined to or received from 2520
your road from those points, is over the Northern Pacific, then, via Billings?

A. Yes, from the Missouri river and west. Our lines in Nebraska. That business goes by Billings exclusively.

Q. So the Northern Pacific gets all of that?

A. Yes, sir.

Q. Now, at other points east of there—junction points on the Great Northern and Northern Pacific, I suppose you receive and deliver freight about equally——

A. Yes, sir.

Q. —on those two systems. 2521

A. Yes, sir.

Q. So that the amount of freight which you deliver to the Northern Pacific and Great Northern destined for junction points on those roads east of Billings, you would divide on about the same basis that you received the business from those two roads east of Billings?

A. Yes, sir, and west, too—west of Billings.

Q. I know, but you get nothing from the Great Northern west of Billings.

A. Not via Billings.

Q. I say you get nothing from the Great Northern west of 2522
Billings?

A. No. The Great Northern delivery is at the Minnesota Transfer, but they deliver there from territory west of Billings.

Q. That is, their territory west of Billings?

A. Yes.

Q. At Minneapolis or St. Paul?

2523 A. Yes.

Q. Over what route do you have the bulk of your Pacific Coast business and Pacific Coast states business, both east and west of the Missouri river—via Billings or via St. Paul and Minneapolis?

A. West of the Missouri river it is via Billings.

Q. All of it?

A. Practically all of it, yes, sir.

Q. Take your Chicago and Iowa business.

A. That practically all comes via the Minnesota transfer, from both roads.

2524 Q. Going west the same way?

A. Going west, yes, sir.

Q. That is, instead of going via Billings from Chicago, it would go via Minneapolis and St. Paul?

A. Yes. We send all our Chicago business via the Minnesota Transfer.

Q. Which is the longest haul from Chicago—by the Minnesota Transfer or via Billings?

A. It is pretty nearly the same.

Q. Of course, if the shipper routes it via Billings you take
2525 it that way, or do you determine that yourself, supposing a shipper in Chicago is sending out ten carloads to the Pacific Coast?

A. If he should request it that way we would send it that way.

Q. Supposing he requests it by the Northern Pacific?

A. He would get it that way.

Q. Via Billings?

A. Yes.

Q. You wouldn't take it via Minnesota Transfer then?

A. No. If it wasn't routed we would send it by the Minne-
2526 sota Transfer.

Q. If it was routed by the Northern Pacific but not via Billings, how would you take it?

A. How is that, again?

Q. Supposing the shipper sent ten cars of freight and directed it by the Burlington and Northern Pacific to the Pacific Coast——

A. We would send it via Minnesota Transfer.

Q. Not by Billings?

2527

A. No, sir.

Q. Now, how do you keep any record that shows the amount of freight you ought to deliver to the Great Northern and Northern Pacific which is unrouted by the shipper and destined for junction points on those two roads? How do you know when you ought to give it to the Great Northern or ought to give it to the Northern Pacific?

A. We get weekly and monthly reports of the business we receive from them and from all of our connections; keep very close track of it, and we instruct our agent, from time to time. He is in daily touch with us.

2528

Q. Do you keep track of the amount of freight you ship by those roads also?

A. Yes, sir, both receipts and deliveries.

Q. At times it is unequal, I suppose?

A. Yes.

Q. And you would try to even it up?

A. Yes.

Q. And the Northern Pacific and the Great Northern leave it to you entirely to determine that?

A. Yes, we control it; it couldn't be otherwise.

Q. When it is unrouted you control it?

2529

A. Yes.

Q. But they (the Northern Pacific and the Great Northern) jointly own the Burlington road?

A. Well, they have given no instructions regarding it.

Q. Leave it to you to determine?

A. Yes.

Q. How did you come to adopt that basis, then?

A. That is the customary basis.

Q. You mean by that with all your connections?

A. Yes, sir, with all our connections we divide it that way, generally. It is recognized everywhere as a fair basis of ex- 2530
change.

Q. Did you receive any copy of the Great Northern and Northern Pacific Railway's circulars withdrawing the so-called equalizing rate between competitive points where by one route the haul was longer than by the other, and the agents were authorized to give over the longer route the shorter rate?

2531 A. No, sir.

Q. You received none of those letters?

A. I haven't seen those, no, sir. When was that?

Q. January 23rd, 1902.

Mr. Grover. After the terminal tariff was taken out.

Witness. No, I have never seen that circular.

Q. That was after you left the Great Northern road?

A. Yes, sir.

CROSS-EXAMINATION.

2532 By Mr. Young:

Q. In this matter of the division of unrouted freight made by the Burlington between these two connecting lines, the Great Northern and the Northern Pacific, is the present basis which you describe the same that was in use on the Burlington before you went there,—that is, of dividing it between the two roads according to the traffic received from each?

A. I think it is, yes, sir. That is the general practice.

Q. Is that the practice of the Burlington system in other cases where it connects with two competing roads?

2533 A. Yes, sir.

Q. And these two roads (Northern Pacific and Great Northern) are treated just the same as are all other roads in that respect?

A. Yes, sir, in that respect.

Q. You say that on the joint shipments between the Burlington and the Great Northern and the Northern Pacific the joint rate made is sometimes divided on a basis of mileage, sometimes it is arbitrary, and sometimes the joint rate is the sum of the locals, or the joint rate is divided in proportion to the local rate, I should say. State whether in that respect the

2534 dealings of the Burlington with these two roads differ from its dealings with other competing roads with which it has connection and makes joint tariffs.

A. The divisions are just the same with all of their connections. The Burlington receives the same divisions that the Milwaukee and the Northwestern and the Great Western receive, always.

Q. In other words, the Burlington treats these two roads, the Northern Pacific and the Great Northern, in this matter

of the division of freights, just as it treats any other two roads with which it has connections? 2535

A. Yes, sir.

Q. Now, all of those joint tariffs of course are made jointly by the parties concerned in them?

A. Yes, sir.

Q. Is there any joint tariff between the Burlington and either of these other two roads (Great Northern and Northern Pacific) to which other roads are not parties?

A. I think not, no, sir.

Q. State whether as a rule the joint rate on the Burlington to and from common points on the Great Northern and the Northern Pacific is the same by one route as by the other. 2536

A. Yes, sir.

Q. Hasn't that always been so?

A. Yes, sir.

Q. It was so while you were connected with the Great Northern?

A. Yes, sir.

Q. And before the purchase of the Burlington stock?

A. Yes, sir.

Q. And isn't that the case always with all joint tariffs? 2537

A. Yes, sir.

Q. As a rule?

A. As a rule.

Q. As a rule, where a joint tariff is made from a point on one road to a common point on two other competing roads, the rate is always the same to that competing point, to whichever of the competing roads it goes?

A. That is the universal rule.

Q. I think you testified there have been some reductions made since you went to the Burlington from points on the Burlington to points on the Great Northern and Northern Pacific west of Minnesota. 2538

A. Yes, sir.

Q. By those do you mean reductions from tariff rates, or do you mean that the published tariff rate has been reduced?

A. The published tariff rate has been reduced.

Q. And the rate has been reduced that way, and not by rate cutting?

A. Yes, sir.

2539

RE-DIRECT EXAMINATION.

By Mr. Munn:

Q. Have the rates been raised on any commodities or the classification changed so as to raise the rate on a given commodity, along the Great Northern and Northern Pacific, since January, 1902?

A. I don't know of any such case.

Q. You don't know of any such case?

A. No, sir.

2540 Q. Have you not received published tariffs of those two roads showing that, on a large number of articles?

A. I don't know of any such case. I haven't checked all the tariffs over. I couldn't say there has not been.

Q. Could you get those tariffs so you would know whether there had been or not?

A. I get them, but I don't check them.

Q. How did you come to know about the reductions, who called your attention to them?

Mr. Young. Those are joint rates.

2541 Mr. Munn. I am talking about joint rates.

A. Because some of them I had the making of or was a party to the making of them.

Q. On the Great Northern and Northern Pacific?

A. The through rates, yes, sir.

Q. I am confining myself to rates to and from the Burlington road, to junction points on the Great Northern and Northern Pacific.

A. Yes, sir.

Q. As a mater of fact, has not the Great Northern and Northern Pacific both raised the rates on certain commodi-

2542 ties to junction points along these two roads, either by raising the rate itself directly, or changing the classification, since January, 1902?

A. It may be, but I don't know it.

Q. You don't know it?

A. I don't know it, no, sir.

Q. Do you know of anything they have reduced the rate on? I mean to those points.

2543

Mr. Young. They couldn't reduce the joint rate.

Mr. Munn. Of course they could.

A. I don't recall of any reductions now except this western tariff rate to Montana and Washington. I happen to know about that because I was a party to the making of it.

Q. Was that where it was in competition with some other road?

A. It was in competition with other roads, yes.

Q. What other roads?

A. The Union Pacific and Canadian Pacific.

2544

Q. The only place where there has been any reduction, that you know of, in the joint tariff, has been at a competitive point with some other road than the Great Northern and Northern Pacific?

A. Yes, sir. It not only included competitive points, but included all of that territory, local and competitive.

Q. Of course the long and the short haul, where you made a reduction of competitive points, would compel a reduction at intermediate points.

A. Under like conditions, I believe.

2545

Q. So that the only reductions which have been effected were those which were made by reason of competitive points with other roads than the Great Northern and the Northern Pacific?

A. Yes, sir. But most of these we proposed ourselves.

Q. That is, you were reducing the rate to get the business?

A. We thought it advisable to make the reduced rates.

Q. At such competitive points with other roads?

A. Yes, sir.

Q. And you made these suggestions yourself?

A. Yes, sir.

2546

Q. Both on behalf of the Great Northern, the Northern Pacific and the Burlington?

A. Yes, sir. I asked the concurrence of all the lines.

Q. And they concurred?

A. Yes, sir.

Q. When you say all the lines you mean the Great Northern, the Northern Pacific and the Burlington?

A. Yes, and the Union Pacific where they were interested.

2547 Q. You mean that you made the reduction to get that business?

A. Yes. Well, it wasn't to control the routing of any particular business. For instance, we reduced the rate on machinery from Chicago to Spokane from $1.58 a hundred to $1.25. That was not to secure the routing of any particular shipment. But we made the rate to Spokane the same as to the coast on agricultural implements and mining machines. We thought it was advisable to do that.

Q. Where the Northern Pacific and Great Northern are in
2548 competition with some other road, like the Union Pacific or the Canadian Pacific, have you made any reduction in your tariffs to get that business?

A. No, sir.

Q. As against any other road?

A. Not made to get any particular shipment, no.

Q. I don't care about any particular shipment, but the business generally.

A. No.

Q. What?

A. No; no reduction to control the routing of any particular
2549 business.

Q. I don't care about controlling the route to get the business.

A. That is the same thing, isn't it?

Q. I don't know. Have you made any reduction, either by publication or otherwise, for points competitive with the Union Pacific and the Canadian Pacific for the purpose of getting the business, since you have been with the Burlington road?

A. Not for the purpose of taking it away, from those lines, no. But we want to participate in that business and have
2550 changed our rates because we thought the commercial conditions warranted it,—not as a matter of competition.

Q. But the other roads changed theirs first, so that you were obliged to, in any case?

A. No, sir, not that I know of. I don't recall any case now.

Q. In other words, has there been any effort by the Northern Pacific and the Great Northern and the Burlington road to secure business to competitive points of other roads in the territory which the first roads reach?

2551

A. No, sir.

Q. Well, you used to do that, didn't you?

(No answer.)

Q. Does the community of interest reach all the roads now?

A. We didn't change the tariff.

Q. Did you cut the rate?

A. There were some cut rates, yes, sir.

Q. And such cuttings were at points where you were in competition with either the Union Pacific or Canadian Pacific?

A. Those reductions were made on specific shipments, spot 2552
shipments.

Q. As against other roads?

A. Yes.

Q. Has any such thing occurred between the Great Northern and the Northern Pacific at points not reached by any other road?

A. I don't know of any.

Q. You don't know of any, do you?

A. No.

Q. What you mean by a cut rate is a change of the tariff rate either by a rebate or some other process? 2553

A. A secret cutting of the rate.

Q. That is, it is what is known as a competitive rate, isn't it, to get the business?

A. It is the same as stealing—the same thing. It is dishonest competition—it is what may be called dishonest competition.

Q. At what points have such cuttings taken place?

A. You mean this——

Q. By the Burlington and Great Northern and Northern Pacific.

A. You mean the secret cutting of rates? 2554

Q. Yes.

A. I think I am safe in saying that since March the 24th last there has been no secret cutting of rates by the Burlington.

Q. I understand, but prior to that time, since you have been with them.

A. Prior to that time?

2555 Q. What points of destination? That is what I am getting at. Was it Pacific Coast business?

A. All competitive business was more or less involved in that sort of thing.

Q. And when you say competitive business you mean business competitive between the Great Northern and Northern Pacific as one system and the other roads, such as the Union Pacific and the Canadian Pacific, on the other?

A. You never could tell who you were cutting against in that sort of business.

2556 Q. I know, but it is always at some point reached by another road than the Northern Pacific or the Great Northern?

A. Not necessarily, no.

Q. Well, do you know of any cutting aside from that?

A. Why, I don't know of any particular cases; I wouldn't undertake to do that; I don't handle that.

Q. You are in charge of the traffic business of the Burlington road, and it comes to your attention sometimes?

A. Certainly, all business was more or less involved in that.

Q. And that would be brought about by reason of the point of destination being reached by some other system, like the

2557 Union Pacific or Canadian Pacific?

A. I have known of cases of that kind of competition where the two agents of the same line were cutting against each other.

Q. Yes, I suppose that is true, but I am not talking about that. Now, as between the Northern Pacific and the Great Northern for junction points along those two lines alone, but not reached by any other road, you don't know of any cutting, do you?

A. No, I don't know of any. The conditions between those two lines never were relatively as bad as they were in other

2558 territory.

Q. Of course the cutting of a tariff rate by one road for any business is sooner or later discovered by the other roads, is it not, by the fact that all the business is going by the road cutting the rate?

A. Yes.

Q. Doesn't that usually bring about a change in the tariff rate as to all the roads?

2559

A. No.

Q. Doesn't it usually, I say?

A. No. It has been tried often to meet cut rates by reduced tariffs, but it is immediately followed by an agreement to restore the tariff.

Q. Well, does it not result frequently in a reduction of the tariff, an agreement to reduce the tariff and maintain it there?

A. No, sir, I think not.

Q. Hasn't that been the case in the flour business in St. Paul and Minneapolis many times, and also the lumber business?

2560

A. It has resulted in an effort to get the tariff back again, that is all.

Q. But it has resulted in a reduction of a tariff rate also, has it not?

A. The tariff rate on lumber and flour has been about the same for years.

Q. I say this secret cutting had resulted in a reduction of the tariff rate in many cases, had it not?

A. Not in many cases; in some cases, yes.

Q. Now, when you say you try to equalize the freight routed over the Northern Pacific and the Great Northern and the Burlington road on the basis of the freight received from those roads, do you take into consideration in such equalization the routed freight that you have delivered to those two roads, or do you disregard that entirely?

2561

A. That is largely disregarded.

Q. You say the joint tariffs of the Great Northern and the Northern Pacific are the same now for junction points?

A. Those, of course, are the same.

Q. The published joint tariffs are always the same, are they not, for junction points?

A. That is the rule, yes, sir.

2562

Q. But the cutting of rates is the disregarding of that joint tariff and making a secret rate by the road seeking to get the business?

A. Yes, sir; it is a dishonest arrangement.

Q. You say that had occurred between the Northern Pacific and the Great Northern before you left the Great Northern road?

A. That did exist to some extent.

2563

RE-CROSS EXAMINATION.

By Mr. Young:

Q. Did that secret rate cutting occur to any particular extent as between the Great Northern and the Northern Pacific?

A. Very little; to a less extent than any other territory that I know of.

Q. To a less extent than any other territory you know of?

A. Yes, sir.

2564 Q. In point of fact, was there any sharp competition between the Great Northern and Northern Pacific during the time that you were with the Great Northern?

A. Not in the matter of secret rates.

Q. And of course each of them tried to get all the business they could?

A. Yes, sir.

Q. But it was to get it at tariff rates?

A. Yes, sir.

Q. Now, you spoke of a reduction to competitive points. As I understand it, where there is a point like Spokane—a com-

2565 petitive point which is reached by the Great Northern, the Northern Pacific, the Union Pacific, the Canadian Pacific I believe, and others, and their connections, is not the joint tariff to and from that place over all these different roads agreed to by these roads in concert with each other?

A. Yes, sir.

Q. Before that tariff is published it is a tariff which is agreed upon by all the roads?

A. Yes, sir. In the case of the machinery I spoke of, we determined that it was to our interest to reduce the rate from Chicago and Milwaukee (manufacturing points) to all North-

2566 ern Pacific and Great Northern territory, Spokane being involved, it being a competitive point—we conferred with other lines interested.

Q. And it was understood with each one of those roads—or each one of those roads agreed on that rate to Spokane?

A. Yes, sir.

Q. So that reduction wouldn't help your road at all as against the other roads in getting business, in the way of competition?

2567

A. No, sir, not on any specific shipment.

Q. Or on that class of business at all?

A. No.

Q. That arrangement was urged by you, not for the purpose of getting business rather than have other roads get it, but because that lower rate would lead to a general increase of the business to be shared by all the roads that could get it at the same rate?

A. Yes, that was the idea.

Q. Now, you say that in apportioning freight between the Great Northern and the Northern Pacific on the basis of what you received from them, you disregard the freight which you 2568 receive from them that is routed by the shipper?

A. Yes, sir.

Q. You do not take that into account. Is that the same as you do in dealing with other roads?

A. Yes, sir.

Q. Make no difference between the Great Northern and Northern Pacific and your other roads?

A. No, sir.

Q. Now, when you represented (as you sometimes did) the Great Northern—you say you sometimes represented the 2569 Great Northern and Northern Pacific at meetings where tariffs were arranged and agreed upon.

A. Yes.

Q. You have represented other roads also, have you, at times?

A. Yes, sir.

Q. That is a common thing, for the official of one road to represent another road?

A. At a meeting of connecting lines, yes, sir. We frequently request some of our connecting lines to represent us.

Q. And in the cases where you acted, as I understood you 2570 to say for the Great Northern and the Northern Pacific, it was at the request of one or the other of those roads, as the case might be?

A. Yes, sir; where I had the matters up with them and understood they were willing to join us, and action was proposed.

By Mr. Munn:

Q. You have cited one instance where you made a reduction

2571 in the tariff rate which was agreed to by all the roads, the place being Seattle. Since you have been with the Burlington road have you found that some of your competitors like that Union Pacific or the Canadian Pacific or Oregon Short Line (which is a part of the Union Pacific system) were making a reduction of rates not known to you until some time after they were made?

A. There have been such cases. You mean in Great Northern and Northern Pacific territory?

Q. Yes.

2572 A. All of those lines are under injunction since about March 20, 1902.

Q. But prior to that time.

A. Well, prior to that time—the conditions on the first of the year are always pretty good, and there wasn't much cutting this year, that is, secret cutting.

Q. I mean from January down to March.

A. There was very little, if any.

Q. You discovered some after you got down there (with the Burlington), I suppose.

A. We had some suspicion. I didn't know whether they 2573 were cutting rates or not, but we had some suspicion.

Q. Did you have conferences with those lines afterwards, fixing the joint rates?

A. We are in constant conference with all of our competitors.

D. MILLER.

Subscribed and sworn to before me this 17th day of December, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

2574

GEORGE B. HARRIS, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION.

By Mr. Munn:

Q. Mr. Harris, you are president of the Chicago, Burlington & Quincy Railway Company?

A. Yes, sir. 2575

Q. And are also president of the railroad company?

A. Yes, sir.

Q. The railway company is the lessee now of the lines formerly owned and controlled by the railroad company?

A. The same.

Q. It already appears in your testimony, I think, but I will ask you again: Substantially all of the capital stock of the railway company and of the railroad company is owned equally by the Great Northern and Northern Pacific Railway companies? 2576

A. I believe it is

Q. And they have owned it since about a year ago last January or February?

A. Yes.

Mr. Young. A little later than that.

Witness. The date when it was taken over I won't specify.

Mr. Munn. Sometime during the winter or spring of 1901.

Q. You have been connected with the Burlington Railroad company for some years?

A. Yes.

Q. How many years? 2577

A. With the Burlington road or roads, which were under other names than they are now—parts of the Burlington road—since about 1866.

Q. But the roads have been under practically one management for something like eight or ten years?

A. Yes.

Q. And you have been president of the C., B. & Q. Railway Company for how many years?

A. Oh, I don't remember the exact time.

Q. Two or three or four years?

A. A year ago, before it was sold, I became president of 2578 the railroad.

Q. And when you became president all the various lines were under the control of the railroad company—the C., B. & Q. Railroad Company?

A. Yes. They were all under the control in one form or another of the C., B. & Q. They were not all under the C., B. & Q. corporation, but some of them were controlled roads or

2579 leased roads. But they were all in what is known as the Burlington system. That is what we are talking about.

Q. And your official position, of course, covered the entire system?

A. Yes.

Q. Do you know approximately how much freight is shipped annually from the Burlington system to points competitive solely on the Great Northern and Northern Pacific systems?

A. I don't know, and it would be impossible for me to make an intelligent reply without looking up the records, and I
2580 don't know as I have them. There is a continual flow of freight.

Q. It is a large quantity?

A. Yes, a large quantity of freight.

Q. And those points are reached only by the Great Northern and Northern Pacific and the Burlington system—in connection with those two roads?

A. Yes. There are many points that are reached only by the Northern Pacific, Great Northern and Burlington.

Q. And there are large quantities of freight shipped to and from such points over the Burlington road?

2581 A. Yes.

Q. That is true of both inside the State of Minnesota as well as outside the state?

A. I should say so.

Q. Do you, yourself, know anything about the division of business or division of freight, rather, received by the Burlington road for junction points on the Great Northern and Northern Pacific which is unrouted by the shipper?

A. I know that there is such freight, and I know that there is unconsigned and consigned freight. The consigned freight is such as is routed as specified by the shipper; the uncon-
2582 signed is freight which is shipped from point of origin to point of destination without the route being specified.

Q. Have you ever had any talk with the officials of the Great Northern or the Northern Pacific about the routing of that freight?

A. We have had so many conferences that I presume that subject may have been discussed, but I have no recollection now as to when it was, and I could not testify. There has

been a general practice or understanding under which we 2583
worked.

Q. Since when?

A. Well, it has always existed.

Q. Do you know of any order made by either the Great Northern or the Northern Pacific or the Burlington regarding the cars of any one of those corporations which may have been received at a junction point or between any of those roads either from other lines or the lines of those roads, being the cars of the particular road at the junction point?

A. I know that no such order was ever made by the Bur- 2584
lington, and I never heard of any such order having been made by either the Northern Pacific or the Great Northern. But I cannot testify as to what has or has not been done by the latter companies.

Q. Has any change taken place in the operation or the handling of freight in the way of cars since November 13, 1901, that did not exist prior to that time?

A. I think that, naturally, there has been a somewhat more free exchange of business and cars. Naturally a friendly feeling would exist even if it was given no voice or direction. But the business of each company is controlled by itself. For 2585
instance, the Burlington road has, in round figures, 45,000 cars. The officers of the Burlington company are charged with the cars, repair and management of those cars. They must not lose possession of them unless they get possession of other cars to take their place. They can exchange with the Northern Pacific and the Great Northern or with any other railroad. The cars are strictly within the charge of the officers who are placed in control of them.

Q. You testified in the case of the United States against these same companies, did you not, some two or three months 2586
ago?

A. Yes.

Q. And you were then testifying regarding the change of any policy of the Burlington road or the lines operated by it so far as that policy affected the Great Northern or the Northern Pacific, and you testified as follows:

"Q. Yes, that has changed the policy, or you would expect to change the policy. What has changed the policy?

2587 "A. Simply a change in interest, a union of interest."

Now, I didn't understand what you meant by that testimony. Can you tell us?

A. Well, I can tell you what I meant by it. The officers and agents of those companies would understand, naturally, that it was to their business interests to promote general trade as much as they could. They would all understand that without being told.

Q. What do you mean by "promote general trade"—promote the business of all the companies?

2588 A. Promote the business of the companies, promote interchange of traffic, promote the business of the public, and thereby promote the interests of the railways.

Q. What do you mean by "union of interests"?

A. The attorneys had used all sorts of terms and there had been some little discussion as to what "merger" meant and what it referred to, and I used that term in a general way to signify the same thing that you meant or I supposed you meant by "merger."

Q. I wasn't examining at that time.

A. Well, I mean the attorney who was examining.

2589 Q. As a matter of fact, you understood, did you not, when you used that term, and you understand now, that there has been, in effect, a union of the interests of the Great Northern, the Northern Pacific and the Burlington roads?

A. There has been a purchase by the Great Northern and the Northern Pacific of the stock of the Burlington road, and to that extent there is a union. There is no union of the railroads, there is no union of the management, there is no union of the direction. They are each independent and free.

Q. As a director of the Burlington road you would expect to follow out the wishes of the stockholders of that road,

2590 would you not?

A. I should, or be deposed.

Q. Or be deposed, of course.

A. Yes, sir.

Q. Therefore, the policy of the Burlington road is controlled by the Great Northern and Northern Pacific, so far as the stock owners can control it?

A. The policy of the Burlington road is controlled by the

voice of the board of directors; that is the only control that I 2591
have.

Q. Well, they are naturally controlled by the stockholders?

A. Yes.

Q. So, the control ultimately comes from the stockholders?

A. Yes. But they have never voiced any control as far as I am concerned.

Q. There never has been a full list of the directors and the executive committee of the Burlington road put into the record. Will you kindly have prepared a complete list of the directors and the executive committee and the executive 2592
officers?

A. That question was asked me when I was here before, and I was rather chagrined that I could not answer it, that I could not remember the names of all the gentlemen. I have them on a memorandum now.

Q. I want to have the record show the names.

A. Shall I read them off?

Q. I wish you would, Mr. Harris.

A. The board of directors of the Chicago, Burlington & Quincy Railroad is as follows: C. E. Perkins, Edward T. Nichols, Geo. B. Harris, James J. Hill, Wm. P. Clough, Robert 2593
Bacon, E. H. Harriman, Jacob H. Schiff, George J. Gould, H. McKay Twombley, Norman B. Rean. The board of directors of the Chicago, Burlington & Quincy Railway Company is as follows: Geo. B. Harris, James J. Hill, James Stillman, Wm. P. Clough, E. H. Harriman, John S. Kennedy, George W. Perkins, Wm. H. McIntyre, Mortimer L. Schiff, C. E. Perkins, Darius Miller. I think I could give the executive committee, but I would prefer to file with the Examiner a list of their names, and if you will permit me to do so I will also file a list of the members of the executive officers.

Q. All right. The executive committee of both those roads, 2594
and also the executive officers, such as the president, vice-presidents, secretary and treasurer. Now, the railway company is the one that now controls the operation and management of the system, is it not?

A. Under the lease.

Q. Under the lease. Now, Mr. Harris, to come back to this question of interest, let me read a little more of your testi-

2595 mony given in the other case before I ask you this question, so you will understand fully what the question relates to. You were asked when you gave your testimony in the other case, this question: "Now, when you were testifying as to your opinion of the advantage of this union—the advantages of this union—were you speculating as to the future, or were you stating advantages that have already accrued to the public?" You answered: "Well, I think they have accrued in a small degree, but to no such extent as they are likely to accrue when we get through talking about it, when all these
2596 things pass away (as I think they will), when people are satisfied to settle down in business and when we question as to whether things that have been done and put together are going to stay together or going to be torn asunder; when merchants and manufacturers feel that they can settle down and do business to-day and to-morrow and forever without having the question raised by somebody. I have no question about it, but some others have. These manufacturers say, 'Well, we don't want to establish places for the reduction of minerals.' For instance, in order to economically and profitably treat these minerals, it requires two ores to do it, one of which
2597 must be procured from one line and another from another, because it all depends on the chemical composition of the ores. 'Why,' they say, 'we guess we will wait awhile.' Q. Where do those ores come from? A. Well, the particular ores that I have in mind come from the Northern Pacific and the Burlington, and they are also found in the Great Northern territory." Now, in so testifying, did you have in mind, when you used the word "union" the operation together and the union of the Great Northern and the Northern Pacific and the Burlington roads?

A. No; I meant the union of interest, the community of in-
2598 terest that would lead those companies to work together for the promotion of traffic and the increasing of business.

Q. The three different roads?

A. The permanent development of resources, where it is necessary to use two or more of the roads for that purpose.

Q. You use the term "community of interest." I have never yet understood that. Mr. Morgan tried to define it.

A. I couldn't tell you. I have seen that term a great many

times, and I have an impression in a general way as to what 2599
it means, but I don't know as I could give a definition of it.

Q. When you used that expression, did you mean the joint interest of all the roads being the same, or the interest of each road being the same?

A. I meant the fact that it seemed to me that it would be to the interest of those roads. They would have a common interest in promoting the growth of through traffic, the development of industries and of resources in the country, so as to make trade and that whenever all questions were solved (if there were any) and a manufacturer felt and could say, "Well, 2600
now, I can settle down here and I can rely practically forever on getting such raw material as I require from this district to mingle with one from that district," and where it is necessary to use both roads to do it, why, they would proceed with their development.

Q. That is, the people residing along any one of these roads could feel that the three roads were practically one system or one road, and they could always rely upon having the same kind of combination because they were one road.

A. No, I wouldn't put it that way, Mr. Munn. I didn't say 2601
one road.

Q. No, I understand, but one system.

A. No, I wouldn't say one system. I would say three roads having common interest.

Q. Well.

A. Those three roads all have a common interest, but they are all separate and independent.

Q. How can a person residing on any one road, after the controversy is all over (as you say you think it is going to be sometime) feel that he is perfectly secure unless they are as one system?

A. Well, I think they would all have a common interest in 2602
promoting the traffic, and I believe the merchants and manufacturers will feel so, too.

Q. That is, they will have the same interest in promoting the traffic on each other's road as they would if the road was their own? That is about the sum and substance of it?

A. About the same thing.

Q. So the result is, in your judgment, the same as if the

2603 three roads were owned by one company? Isn't that right?

A. Well, I don't know as it would be quite as well as that. I would rather have them all put together myself, but it is a fact that each one of them has separate direction.

Q. Yes; they have separate boards of directors, I understand.

A. And they can only take corporate action through their respective boards.

Q. What I am getting at is this, Mr. Harris: in giving your definition of this you had in mind the fact and drew your conclusions from a premise that these three roads were being op-
2604 erated practically as one system?

A. Not operated, but had a common interest in the development of traffic, rather more than where there is simply an ordinary connection.

Q. Not only the development of traffic, but the handling of business and the making of rates, and so on? Did you not?

A. Yes, handling of business.

Q. Then, it results in this, does it not, Mr. Harris, that you then understood and understand now that the advantage which you think is going to accrue from this so-called union
2605 will accrue because these three different systems are to be controlled substantially through one stock holding source?

A. No.

Q. What?

A. No. I didn't say so at all.

Q. I know, but that is what you mean, is it not?

A. No, I don't mean that. I have already said what I meant.

Q. How can there be that reliance by an individual residing on one road, that the other two are going to continue to do this forever, except through some such ownership?

2606 A. Well, I think so, because I believe it would be to their interest to do it. Others may not think that way.

Q. It would be to their self-interest to help and protect each other?

A. Yes. Promote trade.

Q. When you say that you assume that each representative of the different roads would know that it was for the interests of the property of the road that he was working for, to

aid in this development and aid the other road, do you mean 2607
that that would be naturally his conclusion, without instructions from anybody?

A. I think it would.

Q. Why?

A. Well, I think, as I happen to be an officer of the Burlington company, that there is a common interest with the Great Northern and the Northern Pacific, and I think I feel a little differently towards those companies than I do towards others in which I have not the same relation; we are first cousins, at least. 2608

Q. That is because of this——

A. Blood is thicker than water, and I suppose railroad blood is just the same as any other kind.

Q. I guess that is right, Mr. Harris. And when you refer to blood you refer to stock ownership, of course?

A. Yes. I mean the circulation.

Q. The circulation is, of course, the stock ownership of these various corporations?

A. Yes.

Q. That is what you refer to in your answer—ownership of stock, of course? 2609

A. Yes. The circulation of business, the promotion of trade.

Q. And the ownership of the stock of the Burlington road by the Northern Pacific and the Great Northern, and the ownership, in turn, of the stock of the Great Northern and Northern Pacific by the Northern Securities Company brings about this union that you speak of? Is that right?

A. Yes; that common interest which I believe will tend to promote commercial circulation, promote trade and develop industry.

Q. You think that this feeling of willingness to assist each 2610
other, develop each other's property and aid each other would not exist except by reason of such stock ownership?

A. I think it is strengthened. I think we naturally feel that way. That is a mere opinion. I don't know as it is competent for me to swear to it. That is the way I feel.

Q. That is, the more the Burlington road can assist the Great Northern and the Northern Pacific and the more the

2611 Northern Pacific and the Great Northern can assist the Burlington, and the more the Northern Pacific and the Great Northern can assist each other, the better it will be for each of the roads.

A. The more they help themselves, that is the way I feel about it.

Q. Of course this all results, in your judgment, in greater dividends to the stockholders of those companies.

A. I think it results primarily in greater business. I think it tends to break down commercial barriers, and not to create
2612 them. People will buy and sell and travel and trade easier and faster, and more of them, and that will bring in the end (we hope) profits, and I think the community will be very greatly benefited by it, too.

Q. Of course you gentlemen who act for the railroad are looking out for your earnings all the time?

A. We are. But we cannot make any earnings by suppressing trade; we can do it only by promoting commerce.

Q. Of course. But your prime object is to increase your earnings all you can?

A. Yes.

2613 Q. By any fair means.

A. Yes, sir.

Q. And you think those earnings will be increased by reason of this unity of interest between the three roads?

A. I think they will be increased, because I think trade will be increased. Increased earnings are merely incidental generally to increased trade.

Q. But it is that incidental interest that you are after?

A. What?

Q. I say it is that incidental interest you are after?

A. Naturally. There would not be any progress in rail-
2614 roads or anything else if that was not there.

Q. And doesn't it also result in the stability and the maintenance of rates?

A. I hope it will result in the maintenance of lawful published rates. I hope that publicity as to rates will come about so that there will be no more doubt about the price of a rate than there is about the price of a postage stamp; so that every man, no matter where he comes from, can walk up

to the counter and pay his freight rate and get it, and that the 2615
price will be so low that he will be tempted to do it again.

Q. Now, where there is no competition with other roads on any one of these systems, of course this community of interest that you speak of, or unity of interest——

A. Yes, sir.

Q. —tends to maintain at all times the rate to that point?

A. Tends to maintain the lawful rate, but it does not tend to maintain any extortionate rate. Any extortionate rate will kill trade and ruin dividends just as surely as anything that can happen. No money can be made in the railroad busi- 2616
ness by extorting anything from the public.

Q. Yes, that is probably true. But there is a point between what is a fair return and an extortion of rate.

A. There is a reasonable amount of latitude for judgment as to what constitutes proper rate.

Q. And where there is no competition, that is, of course, fixed entirely by the judgment of the railroad reaching that point, or its operators.

A. Well, if I should reply that that is so, I am afraid that you would assume that we would fix those rates from an entirely selfish standpoint. It is selfish, but it is an enlightened 2617
selfishness, I think. It is made for the purpose of promoting trade. Now, don't lose sight of that. Whenever we exact more than we ought to exact or fairly can exact we cut our own throats, we ruin our own business.

Q. Yes, but you always (to use your term) exact what you think the business will stand and yet not injure it?

A. No, we don't *exact;* we don't intend to exact anything.

Q. I used your term.

A. I used that term in speaking of a rate which we ought not to charge. I should say charge a fair price for the busi- 2618
ness.

Q. Now, then, to come back to this question. When you spoke of this union of interest or community of interest, you meant the interest which must follow from a single ownership or control of these corporations?

A. I meant the interest that I have endeavored to describe. I don't know whether I have succeeded or not. But I meant that general interest.

2619 Q. Of course, all of those corporations are controlled ultimately by the stockholders? That is true, isn't it?

A. I suppose it is, undoubtedly.

Q. And that control being unified in one corporation, of course the control of the three companies is unified in that corporation? That follows as a legal conclusion.

A. I don't know whether it is unified. The only control that I know of, as an officer of the Burlington road, is the control of the board of directors of the Burlington company.

Q. But they are controlled, ultimately, by the stockholders?

A. Yes.

2620 Q. I am getting at what you had in mind, not any legal conclusion. When you spoke of this union of interest of the Burlington road and the Great Northern road and the Northern Pacific road, you meant the interest which was combined by reason of the present stock holding conditions?

A. I meant the commercial union. I didn't refer so much to the stock holding or the technical interest that you had in mind as I did to the fact that these corporations would naturally all tend to work together.

Q. Because it would be for the benefit, ultimately, of the

2621 stockholders of the one company?

A. Naturally. Promoting their trade.

Q. That is, in so far as it lies in the power of each one of these roads to aid the other, each road will divert to the other road all the traffic that it can?

A. Naturally do all they can for it, do all that they can to promote and increase business.

Q. Not only to promote business, but to secure business for each other?

A. Secure the business for each other. There isn't very much that can be done in that way. That doesn't cut any

2622 great amount of figure. The great benefit that will arise and the great result that will flow from the common effort will be the creation of business, the settlement of the districts that are tributary to these roads, the development and the reduction of the minerals, the development of the animal industries and all these things, and do it in common one with the other.

Q. That is, a person who has settled on the line of the Burlington road and owns a farm there, will realize that, by rea-

son of this community of stock interest, he can always get 2623
from either the Great Northern or the Northern Pacific, one or two or three years from now, what he can get to-day?

A. I should think he would feel that way.

Q. That is what you have in mind?

A. I should think he would feel it would be to the interest of those companies to promote the exchange of commodities that are raised or manufactured in the various districts.

Q. That is, you then assume or conclude that in the future his confidence will rest entirely upon the fact that these three roads are under substantially a single stock ownership?

A. Oh, I don't think that would be the entire element that 2624
he would consider in fixing the value of his farm, but I think it would be one of the elements. I think it would have something to do with it.

Q. You had that in mind, of course, when you answered the question as you did?

A. Yes.

Q. Do you know who was the proxy committee that voted the stock of the Burlington Railroad Company and the Burlington Railway Company at the last annual meeting?

A. No, I don't remember. 2625

Q. It was done by proxy, I suppose?

A. Mostly, I think. I don't remember.

Q. Could you get the names of the committee and send them up with your list of the executive committees?

A. I suppose so.

Q. I suppose your records show that?

A. Yes.

Q. If you will do that, Mr. Harris, I will be obliged to you.

A. Do you want to know who voted the Burlington stock?

Q. Yes, at the last annual meeting.

A. I don't know how many there were of them; there were 2626
probably a good many. I voted a good many thousand shares of it myself. I don't know that I have the list. I suppose I could get it. I will give you anything that I have.

Q. If you will have your records examined and find who voted the stock of the Great Northern and Northern Pacific

railways at the annual meeting of the Burlington road, I will be obliged to you.

A. Yes.

Q. You understand that is the stock owned in the Burlington road by the Northern Pacific and the Great Northern Railway companies?

A. Yes.

CROSS-EXAMINATION.

By Mr. Young:

Q. I understood you to say that, in your opinion, this union of interest as between these roads, which you have spoken of—the owners of these three roads—would result in a large increase of the volume of traffic?

A. Yes; I think it will develop trade; I think it will promote trade and commerce.

Q. To a considerable or large extent?

A. Yes.

Q. And what effect, in your judgment, will that enlargement of the volume of traffic have upon the rates of these roads, whether to common points upon them or non-competitive points upon them?

A. The general progress of rates for a great many years has been downward, and probably will continue to be downward. It has been downward in a way even in the last few years, although there has been no great reduction. There have been reductions in places. But the railroads (if you will bear in mind) are the only producers of anything in this country that have not generally raised the price in the last year. The railroads pay hundreds of thousands of dollars—millions of dollars, literally, on the Burlington road alone—for the increased cost of material, the increased cost of labor, and they buy every kind of goods, pretty nearly, that are manufactured in the United States. There is hardly an article that you can name that the railroads do not buy. And they pay enormously increased prices for all those things. Therefore, they have been giving the public generally the advantage by selling the same quality of transportation—or a better quality, because it has been improved all the time—for the same price.

There is not a merchant or a manufacturer in the United 2631
States who has not raised prices in the last year or two. But the railroads have not, not one of them.

Q. Perhaps I didn't make myself quite clear. I don't refer to any effect on rates due from general causes, common to all railroads.

A. No.

Q. But what will be the effect of this union of interest of which you have spoken with reference to increase in volume of traffic upon these roads, whether to or from common points or non-competing points?

A. I think the general tendency of all rates is downward, 2632
and I think the general tendency of the rates upon these lines will be downward.

Q. How much of that tendency do you think will be owing —or will it be owing at all—to an increase in the volume of traffic, which you expect will be the result of this union of interest?

A. Well, I think that the general tendency, as I have stated, will be downward; but I cannot analyze it for you and say so much per cent of it will be due to this cause and so much to that. It would be a very difficult thing to do. 2633

Q. Do you think the increase of the volume of traffic will have any tendency towards effecting a reduction of rates?

A. I think it will.

Q. Will it have considerable tendency?

A. Oh, yes.

RE-DIRECT EXAMINATION.

By Mr. Munn:

Q. Now, you, in all your testimony here, assume, of course, a union of interest. I want to know if that union of interest 2634
which you have just referred to is this union of interest by stock holding?

A. Well, I don't think the average railroad agent or man who controls or handles the traffic knows there is any such thing as stock. He doesn't see stock, as a rule; doesn't know anything about it, but they do know that there is some kind of interest, and you don't have to tell them, and naturally they will favor their own.

2635 Q. We have spent a good deal of time here, Mr. Harris, in trying to find out something about this union of interest, this community of interest, this consolidation, this merger—those terms have been used by different witnesses. Now, you have used the terms "union of interest" and "community of interest."

A. Yes.

Q. Now, do you base that definition or statement upon what you understand to be the unity of stock holdings between these companies, or, rather, union of stock holdings in these companies?

2636 A. Union of interest, yes.

Q. That is what you mean by it?

A. I mean that these companies all have a common interest in the promotion of trade and business, and it comes about largely by the union of financial interest.

Q. That is all this union of interest and this community of interest and the results which you figure will flow therefrom——

A. I hope so.

Q. —you believe, because the Great Northern and the 2637 Northern Pacific and the Chicago, Burlington & Quincy are substantially controlled, so far as stock holdings are concerned, by one corporation.

A. Well, they have interests that will lead them to develop trade on their own lines and on those connections.

Q. I understand that, Mr. Harris, but I am talking now about what you had in mind when you used the term "unity of interest," or "union of interest." You meant by that, because the Great Northern and the Northern Pacific owned the Chicago, Burlington & Quincy by reason of its stock holdings, and because the Northern Securities Company owns the 2638 Great Northern and the Northern Pacific by reason of its stock holdings, such things will follow?

A. I believe that by reason of the Great Northern and the Northern Pacific interest in the Burlington road that they are hitched up in a way that it is obviously to the interest of all concerned to promote trade and that that result will follow.

Q. And the result of it is, as between the Northern Pacific and the Great Northern (because a majority of the stock of

those two companies is owned by a single corporation) that 2639
that unity of interest or community of interest will follow down through those two systems?

A. Yes; and I believe that, too, because I think the Great Northern and Northern Pacific territory is one that is peculiarly adapted to commercial connection with the Burlington territory. I think the commodities are such as will exchange very freely and that they will grow very largely.

Q. And do you not believe also, Mr. Harris, that it is greatly to the advantage of the Great Northern and Northern Pacific, by reason of the territory which those two roads supply, to 2640
have that union of ownership in one corporation?

A. I think it is very necessary for those lines to have some road, and I think ours was the one that was best for them to secure to reach the Mississippi and the Missouri valleys.

Q. Kindly answer my question.

A. Well,——

Mr. Grover. Put that question, and we will stipulate that is right.

Q. Do you not think that it is to the interest and advantage of the Great Northern and Northern Pacific Railway Companies and their stockholders that the control of those two 2641
corporations by reason of the territory they reach should be in one company—the Northern Securities Company?

A. Well, I don't know so much about the Great Northern and Northern Pacific. My mind has not dwelt so much upon those as upon the Burlington road. I never was a stockholder in the Great Northern or Northern Pacific for a long time, and I don't know much about them.

Q. In giving your reasons for your belief as to the results which are going to flow here you assume all the time that the Great Northern and Northern Pacific, so far as the stock- 2642
holders were concerned, were controlled by a single corporation, of course.

A. I did that on account of the connecting relations to the Burlington and the effect on the Burlington and, incidentally, on the whole corporation, of course. I have not devoted so much time or thought to the Northern Pacific and the Great Northern as I have to the Burlington.

2643 Q. I understand. I want to get what you had in mind, Mr. Harris, when you spoke of the community of interest or unity of interest. Did you not have in mind the fact that the Great Northern and the Northern Pacific were controlled by a single corporation by reason of their stock holdings in that corporation?

A. I had very largely in mind the fact of the close relations of the Burlington company with these two companies. That was the prominent idea in my mind. I am aware of the fact that the Great Northern and Northern Pacific exist, but I
2644 didn't know so much about them in their relation one to the other or to the Burlington.

Q. I shall have to insist upon my question, Mr. Harris.

A. I will tell you anything in the world I know; I don't know much, but what I know I will tell you.

Q. I want to know, Mr. Harris, if you did not assume in giving your reasons as to what was going to follow here from this union of interest or community of interest that the Great Northern and the Northern Pacific were owned and controlled by a single corporation.

A. I didn't assume anything about the Great Northern and
2645 the Northern Pacific independently. I merely assumed about the relations of the Burlington to the Great Northern and the Northern Pacific. I didn't assume to know about that because I have not devoted myself to it. I have thought a great deal about the relations of both the Burlington to the Northern Pacific and of the Burlington to the Great Northern, but of the relations of the Northern Pacific to the Great Northern or the Great Northern to the Northern Pacific or either one of them, I never laid awake nights about it. I didn't know anything about that.

Q. You spoke, Mr. Harris, of the tendency of rates being
2646 downward. Is it not a fact, not only on the Burlington road, but on the Northern Pacific and the Great Northern, as far as their rates are joint, that the Burlington road has raised the rate during the past year (1902) upon a large number of articles, either by raising the rate directly or by changing the classification so as to raise it?

A. Well, those things are under way all the time. I don't know that there have or there have not been. I think it is

quite likely that there may have been some little raise. But 2647
what I say about the general tendency of rates is undoubtedly correct. In speaking of rates, of course I mean tariff rates. There have been times when clandestine or secret rates were in effect or which were made on single or spot shipments, as they are called, but I have not taken account of them or attempted to. It would be very difficult for anybody to give an opinion on that subject without going through such an enormous mass of stuff that it would take a long time to do it.

Q. Well, do you know anything about the tariff rates of the Burlington road in detail? 2648

A. I might be able, perhaps, to remember some rates in effect, but I could not stand an examination on the general schedule of rates now in force.

Q. Is it not a fact, I will ask you again, that the rates on a large number of commodities have been raised during the past year so far as the Burlington and Great Northern and Northern Pacific railways are concerned?

A. I could not reply whether it is true or untrue; I am not aware.

GEO. B. HARRIS.

Subscribed and sworn to before me this 17th day of Decem- 2649
ber, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

Thereupon the further taking of testimony was adjourned until December 17, 1902, at 10 A. M.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY.
Office of President. 2650
Chicago, Dec. 30, 1902.

Mr. F. G. Ingersoll, Special Master and Examiner, New York Life Building, St. Paul, Minn..

Dear Sir: Referring to the request of Mr. Munn, made to me when on the stand in the examination before you at St. Paul, on December 16, 1902, that I file with you certain information. It is as follows:

2651 The board of directors of the Chicago, Burlington & Quincy Railroad Company passes on all questions put before it, and has not delegated any powers to an executive committee.

The executive officers of that company are:

President, Geo. B. Harris.

Vice-President, Thomas S. Howland.

The Chicago, Burlington & Quincy Railway Company board of directors has elected the following executive committee:

The President, ex officio member and chairman.

George W. Perkins,

2652 James J. Hill,

E. H. Harriman,

Mortimer L. Schiff,

W. P. Clough.

Officers of the Chicago, Burlington & Quincy Railway Company:

President, Geo. B. Harris.

Vice-President, Darius Miller.

Second Vice-President, Howard Elliott.

The proxies for the stock of the Chicago, Burlington & Quincy Railroad owned by the Northern Pacific Railway and
2653 Great Northern Railway were drawn in favor of William P. Clough and Emerson Hadley.

Yours truly,

GEO. B. HARRIS, President.

Note: It is stipulated that the proxies to Mr. Clough and Mr. Hadley above referred to were issued Nov. 4, 1901.

FREDERICK G. INGERSOLL,
Special Examiner.

2654 City of New York, January 15, 1903.

By consent of all parties further proceedings in this cause were adjourned to Friday, January 16, 1903, at 3 p. m.

City of New York, January 16, 1903.

Proceedings were resumed before the Examiner pursuant to adjournment.

By consent of all the parties the following stipulation was spread upon the record:

On or about the 27th day of December, 1901, the Northern 2655
Securities Company owned 41 millions and upwards of preferred stock of the Northern Pacific Railway Company, practically all of which had been acquired, as has been stated in the evidence taken in this case, from E. H. Harriman and Winslow S. Pierce. On the same day the Northern Securities Company was entitled to subscribe for and buy and pay for an amount of the convertible bonds to be issued by the Northern Pacific Railway Company for getting the money to retire the preferred stock of that company, equaling $34,709,062.50. Under authority of the resolutions of the board of directors 2656
and of the executive committee of the Northern Pacific Railway Company, on that day the Northern Securities Company applied to the Northern Pacific Railway Company to purchase from it, and did purchase from it, its convertible bonds to said amount. At about the same time it presented to the Northern Pacific Railway Company for retirement an amount of the preferred stock of the Northern Pacific Railway Company owned by it, equaling $34,709,000. At that time J. P. Morgan & Company were the fiscal agents and bankers of the Northern Pacific Railway Company, on whom practically all checks for the disbursements of moneys made in New York 2657
by the Northern Pacific were drawn, and with whom the Northern Pacific Railway Company had on that day a credit for whatever amount was necessary to be drawn to pay for preferred stock of the Northern Pacific Railway Company that should be presented for retirement. J. P. Morgan & Company were also at the same time bankers of the Northern Securities Company. On the day named the Northern Pacific Railway Company paid off at par and retired the said preferred stock presented to it by the Northern Securities Company, paying for the same in its check drawn upon J. P. Morgan & Company in favor of the Northern Securities Company, 2658
and on that day the Northern Securities Company paid for the said convertible bonds which it purchased from the Northern Pacific Railway Company by its check drawn in favor of the Northern Pacific Railway Company, also upon the firm of J. P. Morgan & Company, the checks of the respective companies being for the amounts above stated. Both of said checks were deposited with J. P. Morgan & Company by their

2659 respective holders in the usual course of business. During the day of December 27, 1901, the Northern Pacific Railway Company had on deposit with J. P. Morgan & Company about $500,000 in cash, aside from the amount of credit it had as above mentioned.

Mr. Clough stated that recently he had had telephonic communication with Attorney General Douglas, in which the attorney general had asked certain questions of Mr. Clough. Mr. Clough dictated the following as the questions and his answers thereto:

2660 Question 1. By what date had the Northern Securities Company acquired a majority of the Northern Pacific common stock?

Answer. By November 20, 1901. On that day the Northern Securities held, in round numbers, 408,000 shares of the common stock, being $40,800,000.

Question 2. How much Northern Pacific common stock had been acquired by the Northern Securities Company up to December 1, 1901?

Answer. 557,304 shares, being $55,730,400.

Question 3. By what date had the Northern Securities
2661 Company acquired a majority of Great Northern stock?

Answer. December 27, 1901, amounting, in round numbers, to a little over $60,000,000. On November 18, 1901, the Northern Securities Company acquired from Harriman and Pierce 41,000,000 of the preferred stock of the Northern Pacific.

Mr. Hill sold Great Northern shares to Northern Securities Company beginning on November 18, 1901, and running along through from time to time; Mr. Baker, Mr. James, Mr. Kennedy and Mr. Thorne the same.

2662

FRANCIS LYNDE STETSON, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION.

By Mr. Douglas:

Q. In November, 1901, Mr. Stetson, were you acting as general counsel or attorney for J. P. Morgan & Company?

2663

A. I was.

Q. Were you in part conversant with the manner of the organization of the Northern Securities Company?

A. I was.

Q. I wish to ask you this, Mr. Stetson: did you, prior to the organization of the Northern Securities Company, discuss with Col. Clough the question of the organization of the Northern Securities Company, and the acquisition of the stock of the Northern Pacific by it, as to whether or not that was in violation of the laws of the State of Minnesota? Not what was said, but whether you discussed the question.

2664

A. I don't know whether I did or not.

Q. Did you discuss with Col. Clough prior to the organization of the Northern Securities Company the question whether or not the organization of this company and the acquisition by it of the capital stock of the Northern Pacific and Great Northern Railway Companies would be in violation of law?

A. I have no doubt, as I was counsel not only for J. P. Morgan & Company but also called upon by Col. Clough to advise him as to the organization of this company, that I advised him upon all points concerning which he asked my advice; but as to the extent to which I advised him and as to the subject of my advice I am not free, of course you know, to testify.

2665

Q. No, my question was not aimed at inquiry as to what was said.

A. My duty to my clients of course goes far beyond the question of what I said. I have no right to discuss what they asked me about. But without reference to that I have gone on and told you. I have no doubt that I advised him upon every subject that he asked me about. But, as I say, I was not alone J. P. Morgan & Company's counsel. I was counsel for Col. Clough and for those whom he represented in the matter of the organization of the company.

2666

Q. Well, did Col. Clough talk with you prior to the organization of the Northern Securities Company—I will change that. Did he discuss with you the question of the right of the Northern Securities Company or of such a company to acquire the capital stock of the Northern Pacific or Great Northern Railway Company? Not what was said, but did he discuss the question with you at all?

2667 A. Did he discuss the question with me at all?

Q. Yes, sir. Not what was said.

A. When?

Q. Prior to the organization of the Northern Securities Company.

A. I don't know that he did. I don't remember that he did.

Mr. Clough. I have no recollection of it.

Witness. Well, I say that I don't remember that he did. If he did, I have no doubt that I advised him what my opinion really was. If you wish to know what my opinion is and was
2668 on that point, I will tell you. I am not reticent on the subject. If you wish to know what my opinion is about this I am perfectly willing to tell you. I am only endeavoring to indicate to you with precision what it is that I may not answer.

Q. We appreciate that the question of privilege would bar you from answering, and we hesitate in asking.

A. As far as I am concerned, I am willing to answer the whole thing. You are welcome to my opinion and I am willing to answer everything that the law allows me to. You know the limits as well as I do.

Q. Did you discuss this question with Mr. Grover, or with
2669 any other party representing the Great Northern or the Northern Securities Company?

A. I don't think I ever had the pleasure of meeting Mr. Grover in this case until after the sky was blue with lightning in every quarter. I think after the president of the United States and the governor of the State of Minnesota acted was the first time Mr. Grover honored me with any discussion on the subject.

Q. You stated that you presumed you considered every question which Col. Clough presented to you, but I think you did not answer my question as to whether you recall consid-
2670 ering with Col. Clough or with any other person representing the Northern Securities Company, or interested, we will say, in its organization, the question as to the right of that company to take on the stock of the Northern Pacific and Great Northern Railway Companies. Now, will you please answer? Tell us the best of your recollection upon that point. Not what was said, but whether you discussed it at all with any of the parties to which I have called your attention.

A. Well, if you ask me as a matter of memory I cannot tell 2671
you.

Q. What is your best recollection upon that point?

A. I don't know. I should think it very strange if I hadn't. But I haven't any memory on that point at all.

Q. Your impression is, then, that you did consider the question?

Mr. Grover. How can he have an impression if he doesn't remember?

A. I say I have neither an impression nor memory. But I should consider it rather strange, in a matter as important as 2672
this, that I had not considered it.

Q. You knew at that time that there was litigation years before with reference to the consolidation of the stock of the Northern Pacific and the Great Northern Railway Companies?

A. Oh, I am very familiar with that. That Pearsall suit was brought in consequence of my objections at the time.

Q. And naturally the questions to which I attract your attention would be one of the primary matters which you would consider, isn't that true?

A. Yes, if it hadn't been so largely laid at rest by the decision in the Pearsall case, which I thought authorized any 2673
private person to own the stock of those roads.

Q. But the Northern Securities Company was not a private person.

A. I considered it so, in that sense. I don't know what other people thought; I know what I thought.

Q. Of course I am not asking you what you thought; that would be privileged.

A. Well, I am perfectly willing that anyone should have my opinion as to the matter.

Q. Then, I infer from your statement, Mr. Stetson, that you evidently proceeded in the organization of the Northern Se- 2674
curities Company upon the theory that the case to which you refer authorized or permitted the action to which your attention has been called, that is, this class of organizations, as well as taking on of the stock of the Northern Pacific and the Great Northern.

A. I don't say it authorized or permitted it; I say I think it recognized it.

2675 Q. You acted upon that presumption?

A. I didn't act upon that presumption. Col. Clough honored me by asking me to advise him with reference to the formation of a corporation under the laws of New Jersey. I proceeded then, having had considerable familiarity with the organization of such companies, to complete the papers, in conference with him. The papers were drafted in my office, they were written out, and an adjournment was taken up town, and the gentlemen who signed as incorporators signed in my presence and in the presence of a master, and a young
2676 man from my office took them to New Jersey and registered them. I didn't understand that my opinion was of the slightest consequence as to whether the transaction was or was not in accordance with any laws. My advice was not asked, as far as I remember, with reference to the transaction itself, but it was with reference to the best form of preparing that corporation as an investment company. Now, what it was going to do afterwards with that, I don't remember. Whether questions or discussions afterwards arose between Col. Clough and myself I am not prepared to state; because if they did or did not it is a matter between myself and Col. Clough
2677 and those whom he represented, for whom I was acting specially. I am perfectly willing, as I say, to give you any information I am at liberty to give you. I hope, Mr. Attorney General, you will understand my position.

Q. Briefly stated, I understand your conclusions to be these: that you have no definite recollection upon the subject, but you would think it very strange if you did not consider the question itself to which your attention has been directed; not what was said, but you consider the question itself.

Mr. Grover. When? What point of time?

Mr. Douglas. At the time or prior to the organization of
2678 the Northern Securities Company.

A. I should say at the time or subsequent; not at the time or prior to. I don't think that I gave any attention to that matter until after—if you will ask me that——

Q. Would you say at the time or immediately subsequent thereto?

A. I say I don't think I gave any attention whatever to that matter until after that company was organized. I think any

attention I had given to it was a day or two or three days 2679
subsequent. As you keep bringing up the questions, they tend to reproduce the scene in my mind.

Q. You are quite certain, then, that one or two days after the organization of the Northern Securities Company, to-wit, about the 16th or 17th of November, 1901, you did take that matter up with Col. Clough and did consider it? Is that true?

A. I have nothing to say on that point. I just told you so, that I cannot tell you what I considered with him. But I have told you that I did not consider it until afterwards, if I did then. I know I did not at the outset.

Q. Did you consider it with Col. Clough within one or two 2680
days afterwards?

A. I am not prepared to answer that question. I am prepared to answer, but I am not free to answer it. As I say, I am perfectly willing to tell you what my opinion was then and is now. Whether I communicated it to Mr. Clough——

Q. I am not asking you whether you communicated it.

A. I can't have consideration with Col. Clough unless I tell you I am in communication with Col. Clough. That is the express thing I am forbidden to state.

2681

By Mr. Munn:

Q. Who selected these three incorporators—Mr. Baker, Mr. Hyatt and Mr. Trimble?

A. Col. Clough suggested Mr. George F. Baker; Mr. George W. Perkins, of J. P. Morgan & Company, suggested Mr. Abram M. Hyatt and Mr. Richard Trimble. Those three were all gentlemen of substance, who put in their own money. I myself communicated with them and asked them if they were prepared to enter upon an investment company and put up their own money, and they said they were.

Q. Have they since acquired any stock in the Northern Se- 2682
curities Company aside from that which they subscribed for at the time the company was organized?

Mr. Clough. No, they have not.

Mr. Munn. Do they still own that stock?

Mr. Clough. My recollection is that they do (I haven't looked at the transfer books lately) except as you notice they made a transfer of one share—each director bought and paid

2683 for one share of stock. That was an actual purchase, and they paid for it.

Mr. Munn. The record shows that.

THOMAS C. SHOTWELL, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

Examined by Mr. Munn:

2684 Q. Mr. Shotwell, you have been acting as a reporter for different papers in New York for some years past?

A. Yes, sir.

Q. Do you know Mr. W. P. Clough?

A. Just as I know hundreds of people around New York; know him when I see him.

Q. Did you have an interview with him or any conversation with him, acting in your capacity as a reporter, at or about the time the Northern Securities Company was organized, regarding that company?

A. I talked to nearly everybody that had connection with it.

2685 Mr. Clough. Not to me; I never saw him before.

Q. Did you have any interview with Mr. Clough at or about this time as to the Northern Securities Company and the acquisition by that corporation of the stock of the Great Northern and Northern Pacific being in violation or not in violation of the laws of the State of Minnesota or national laws?

A. Well, I cannot say I had an interview with him. I just saw him and others, and they would say, "We can't talk about it; the thing is all right and we can't discuss it."

Q. Did you ask him whether he had considered that the

2686 formation of the Northern Securities Company would be in violation of the laws of the State of Minnesota or any other laws?

A. I never got that far with them. He would just simply say the thing is all right and perfectly legal. Everybody ridiculed the suit brought against it, and I think Col. Clough did the same thing.

Q. But did you have any talk with him very shortly after the announcement of the formation of the Northern Securities

Company as to whether or not it was in violation of the laws 2687
of the State of Minnesota?

Objected to by defendants as incompetent, irrelevant and immaterial.

A. It is two years ago, and I could not state explicitly.

Q. Well, I didn't ask you the exact conversation, but to the effect of the question that I have asked.

A. About that time I was seeing everybody; every newspaper man in New York assigned to Wall street was seeing everybody that could possibly be gotten at; go to their offices or meet them on the street and trying hard to get them to dis- 2688
cuss it, and I remember I couldn't get anyone to discuss it except just briefly. They would say the thing is all right, and we can't discuss it.

By Mr. Douglas:

Q. Do you know whether at that time the action of the Northern Securities had been challenged as being illegal—about that time?

A. Yes.

Q. Was it from the fact that you knew that its legality had been challenged that you were seeking interviews on this subject? 2689

A. Oh, certainly.

Q. And did you interview Col. Clough, among others, on that subject?

A. Well, I can't call it an interview.

Q. Well, did you talk with him about it? I don't care whether you call it an interview.

A. Well, I would go in and I would say, "Col. Clough, can you tell me anything about this matter?" or I would go to any other person. I can't single out Col. Clough. I went to Mr. Hill and Mr. Stetson and into Mr. Morgan's office, and they all 2690
said, "We can't discuss it." I remember that I did go, of course, because we wanted to find out what they had to say about it.

Q. Did Mr. Clough or Mr. Hill or Mr. Stetson state to you in any of these interviews that the matter had been fully consid-

2691 ered and that they had determined it was not in violation of the law?

Objected to by defendants as immaterial and irrelevant.

A. I can only say in a general way that I went to everybody that I could think of who might possibly know anything about it and would ask them about it, and I remember everybody put me off with the statement, "We can't discuss it; it is legal, it is all right." They didn't discuss with me what they had done before they organized it.

No cross-examination.

2692 (The testimony of the witness W. P. Clough was here taken by defendants by consent of all parties, the same to be inserted by the examiner in its proper place in defendants' record.)

It is hereby stipulated and agreed that the testimony of the two foregoing witnesses need not be read over and signed by them before the examiner, such reading and signing being duly waived.

It is stipulated that the testimony of each witness in this cause as given by him need not be read over to him by the examiner and thereafter signed by such witness in the pres-
2693 ence of the counsel of the respective parties, but that the same may be read over by each witness and signed and sworn to by him before the examiner.

It is hereby stipulated and agreed that the evidence taken on behalf of the complainant in this cause may be arranged in the printed record by the special examiner in accordance with the requests of counsel for the complainant.

The further taking of testimony in this cause is adjourned until the 26th day of January, 1903, in the City of St. Paul, in the Federal Building, at 10 A. M.

2694

Federal Building, St. Paul, Minn., December 5, 1902, 11 a. m.

This case was called for hearing by the Examiner at the above time and place, pursuant to adjournment, all parties being present.

Thereupon by consent the hearing was adjourned to December 11, 1902, at 10 a. m., at this place.

2695 St. Paul Minn., Dec. 11, 1902, 10 a. m.

The case was called pursuant to adjournment, all parties present, and the following proceedings were had:

GEORGE A. FLINN, called as a witness for complainant. (Testimony inserted by agreement at page 14 of this record.)

GEORGE D. ROGERS, called as a witness for complainant. (Testimony inserted by agreement at page 21 of this record.)

S. A. KEMP, called as a witness for complainant. (Testimony inserted by agreement at page 27 of this record.) 2696

A. J. WRIGHT, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION.

2697 By Mr. Douglas:

Q. What is your business, Mr. Wright?

A. Furniture and undertaking business.

Q. And your residence?

A. Moorhead, Minnesota.

Q. And you are a member of what firm?

A. Beck & Wright.

Q. How many years have you been engaged in that business, Mr. Wright?

A. Since 1885 under that firm name.

Q. And at Moorhead continuously?

2698 A. At Moorhead all the time, yes, sir.

Q. Are you engaged in any sense in manufacturing?

A. We are to some extent, yes.

Q. You said you were undertakers as well as furniture dealers.

A. Undertakers, as well as furniture dealers.

Q. In part, in slight degree, are you manufacturers?

A. Yes, sir.

2699 Q. Have you had occasion during the past fifteen years to ship commodities, which you have purchased or which you have in part manufactured, over the lines of both the Great Northern and Northern Pacific Railway Companies, which merge in Moorhead?

A. We have.

Q. I will ask you if in your line as undertakers, say prior to the 1st of December last you had occasion to use one or both of these lines of railway in shipping coffins from any particular place?

2700 A. We had; from Fergus Falls.

Q. Buying almost exclusively from Fergus Falls?

A. We have for the last two or three years bought almost exclusively from there.

Q. There is a coffin manufactory at that place?

A. Yes, sir.

Q. Are you familiar with the rates of freight charged by each of these railways for the shipment of that class of goods from Fergus Falls to Moorhead?

A. Yes.

Q. Has the rate been identical on both roads?

2701 A. It has.

Q. That is, it was identical prior to December 1, 1901?

A. Yes, sir.

Q. Which is the shorter haul, Mr. Wright, and what are the distances?

A. From Fergus Falls to Moorhead?

Q. Yes.

A. The shorter haul is the Great Northern. I think about fifty-five miles, if I am not mistaken.

Q. It is about fifty-five miles by the Great Northern from Fergus Falls to Moorhead?

2702 A. Yes.

Q. What is the line of shipment from Fergus Falls to Moorhead, by what towns?

A. From Fergus Falls to Wadena and thence to Moorhead.

Q. What is the distance by rail on the Northern Pacific from Fergus Falls to Moorhead?

A. I have never figured that up. It is considerably more than it is by the other way, of course.

2703

Q. Nearly twice as great?

A. It must be.

Q. I will ask you to state about the length of time that it ordinarily took to ship goods from Fergus Falls to Moorhead, or consignments such as coffins, by each of these routes.

A. Generally we would get them over the Northern Pacific in about twenty-four hours from the time they were shipped.

Q. And how long a time on the Great Northern?

A. It has taken from that time up to five days.

Q. Ordinarily about how much time?

A. About two days; ordinarily about two days.

2704

Q. In other words, the longer haul came far quicker?

A. Yes, sir.

Q. You say the rate was the same prior to December 1, 1901?

A. Yes.

Q. Was the rate on the transportation of that class of property changed in December, 1901?

A. Not to my knowledge.

Q. What is it?

A. Not to my knowledge.

Q. Was it changed on the Northern Pacific road?

2705

A. In December?

Q. In December, 1901, or about January 1, 1902.

A. Some time in January, 1902, we were notified we would have to pay the long haul if we shipped over the Northern Pacific.

Q. The Northern Pacific rate was taken off, then, in January?

A. Some time in January.

Mr. Young. Some time in January, 1902?

Witness. Yes, sir.

Mr. Young. And you were told you would have to pay the long haul rate on the Northern Pacific if you shipped that way?

2706

A. Yes, sir.

Q. Who told you?

A. I am not just positive whether it was the local agent or Mr. Beck, my partner, who told me. I would not swear

2707 whether the local agent told me or Mr. Beck told me. My recollection is that the agent told me.

Mr. Young. The agent of what road?

Witness. Of the Northern Pacific. But I could not swear to that, because my recollection is not clear.

Q. What was the difference, approximately, of the existing rate on the Northern Pacific prior to that time and the rate that was at that time put in force?

A. On the Northern Pacific?

Q. Yes.

A. I never inquired.

2708 Q. Was it larger or smaller from that time forward?

A. It was larger.

Q. Much higher rate?

A. Certainly.

Q. What was the effect of the change of rate so far as your shipments were concerned?

A. In what way?

Q. Over what line were you thereafter compelled to ship?

A. The Great Northern.

Q. On what line did you from that time forward, for two or

2709 three months, ship all coffins?

A. Over the Great Northern.

Q. Was the prior rate at any subsequent time (if so, state when) put in force?

A. (After referring to paper.) Some time between the 31st of March and the 2nd of May.

Q. That was after the beginning of the litigation by the State of Minnesota against the Northern Securities Company and the railway companies that this rate was changed again, was it?

Mr. Young. That is objected to as incompetent and as an

2710 attempt to argue that the rate was changed in consequence of the commencement of this litigation.

Mr. Douglas. Not in consequence, but subsequent to the date of the commencement of this litigation.

Mr. Young. That is entirely immaterial then.

Mr. Douglas. I will withdraw that question.

Q. At what date was the next change, if any, that took place in this rate?

A. The first change of which we have any record is on May 2nd. 2711

Q. In what year?

A. 1902.

Q. What was the change that took place at that time?

A. We were notified that the order was off and that we could ship the other way.

Q. Who notified you?

A. The agent of the Northern Pacific notified me in person.

Q. Were you present when he notified you?

A. He notified me personally that we could ship the other way, if we so desired, at the same rate. 2712

Q. Can you recall the language which he used in any conversation that you had with him (the agent of the Northern Pacific Railway Company) at that time?

Objected to by defendants as incompetent and immaterial.

A. I could not recall the exact words, of course, but simply a statement that we could, if we desired, ship over their road again the same as we had been doing.

Q. Do you recall any reasons which were assigned, if any, at that time?

A. There were not any reasons assigned. 2713

Q. You do not recall any reasons?

A. No, sir.

Q. And from that time forward you have been shipping over what road?

A. Over the Northern Pacific most of the time.

Q. The original rate was restored, do I understand you, at that time?

A. Yes, sir.

Q. A joint rate?

A. Yes, sir. 2714

Q. Over both the long and the short routes?

A. The same on both roads.

Q. What was that rate?

A. Twenty-eight cents a hundred.

Q. In the meantime when you were compelled to receive consignments promptly and before that rate had been restored, were you at any time compelled to ship from Fergus Falls to Moorhead by express?

2715 Objected to by defendans as incompetent and immaterial.

A. On account of having to ship by freight on the Great Northern?

Q. I don't ask you for any reasons; but, as a matter of fact, to get your goods promptly, were you compelled to ship by express?

A. Well, we have to do that at all times.

Q. Did you have any more of that class of consignments during that period, than you would otherwise have, because of the delay in the method of shipping?

2716 Objected to by defendants as incompetent and immaterial.

A. No.

Q. How long had this rate which was in existence as a joint rate——

Mr. Young. He hasn't spoken of a joint rate.

Q. How long had an equal rate between those two points been in existence prior to January 1, 1902?

A. About four or five years, I think.

CROSS-EXAMINATION.

2717 By Mr. Young.

Q. That same rate has been in force ever since last May?

A. May of 1902?

Q. Yes.

A. Yes, sir.

Q. It was taken off for about a month, as I understood you, between March 31st and May 2nd, 1902?

A. It was taken off some time between January 24th and February 10th, 1902.

Q. The information which you said you got as to the taking off of the rate I think you stated came either from the station
2718 agent or from Mr. Beck (your partner). If it came from the station agent, from the station agent of what company did it come—the Northern Pacific?

A. The Northern Pacific, yes sir.

Q. And it was the Northern Pacific agent that told you it was restored?

A. Yes, sir.

By Mr. Douglas:

Q. What date was that in January, 1902, that this took 2719
place?

A. I couldn't give you the exact dates, except it was between certain dates.

Q. Well, between what dates?

A. It was between January 24th and February 10th.

Q. Mr. Wright, haven't you a shipment on the Great Northern of January 5, 1902?

A. No, sir. Our last shipment was January 24th on the Northern Pacific.

A. J. WRIGHT.

Subscribed and sworn to before me this 11th day of De- 2720
cember, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

LOUIS T. STODDER, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

2721

Examined by Mr. Douglas:

Q. What is your full name?

A. The full middle name?

Q. No, your initials.

A. L. T.

Q. Are you at present the agent of the Northern Pacific Railway Company at Moorhead, Minnesota?

A. Yes, sir.

Q. How long have you been agent of this road at that place?

A. That is, at Moorhead since about the 8th of November 2722
a year ago.

Q. How long have you acted as agent of the Northern Pacific Railway in this state or at any place?

A. At any one point?

Q. All together.

A. All together between 13 and 14 years.

Q. Do you know Mr. A. J. Wright and Mr. O. C. Beck of Moorhead?

2723 A. Yes, sir.

Q. Furniture dealers?

A. Yes, sir.

Q. Mr. Stodder, do you recall receiving notice from the general freight department of the Northern Pacific Railway Company—any information, either by circular letter or otherwise—modifying the rate between competitive stations on the Northern Pacific and the Great Northern lines of railway, on or about January 1, 1902?

A. Well, when you say "rates," you mean published rates or——

2724 Q. Well, any rates, whether published or not.

A. Yes, sir. My recollection is it was sometime during January.

Q. 1902?

A. 1902, yes, sir.

Q. Was it early or late in January, 1902?

A. My recollection is it was in the latter part of January.

Q. What was the nature of the instructions that you received? Not what the letter contained, but was it by virtue of a letter or a published bulletin?

2725 A. My recollection is that it was a letter addressed to several agents, for instance ten or twelve, and my name was checked amongst the rest. It was not to me alone.

Q. It was a circular letter to a number of different agents?

A. A circular letter to a number of different agents.

Q. Whose names you do not now recall?

A. No, I do not.

Q. It applied to and affected rates upon the Northern Pacific line of railway between points which were competitive with the Great Northern system?

A. Yes, sir, to a certain extent.

2726 Q. And it would include, among others, Fergus Falls and Moorhead?

A. Yes, sir.

Q. Both the Great Northern and the Northern Pacific touch each of those places?

A. Yes, sir.

Q. Which is the longer haul?

A. The Northern Pacific.

2727

Q. By way of Wadena?

A. By way of Wadena Junction, yes, sir.

Q. It is 40 per cent or upwards of the longer haul, is it not?

A. Somewhere about 160 miles.

Q. 160 miles by way of Wadena?

A. I should say about that.

Q. It is about 56 miles by way of Fergus Falls on the Great Northern, is it not?

A. Yes, sir.

Q. So that it is pretty near three times as long?

A. Yes, sir.

2728

Q. Prior to that time did your railway company receive and deliver from Fergus Falls, consigned to Beck & Wright, frequent shipments of coffins, among other things?

A. Yes, sir.

Q. Where were such coffins shipped from and to what place, as you recall it?

A. From Fergus Falls to Moorhead.

Q. To Beck & Wright at Moorhead?

A. To Beck & Wright at Moorhead, yes, sir.

Q. They were frequent shipments?

2729

A. Well, I couldn't say how frequent they were. I don't handle that matter personally myself, but I know that we were getting business from them.

Q. After this change in rate did you have any further shipments for some months?

A. Well, for a space of six or eight weeks I don't recall any.

Q. What was the change?

A. I don't quite understand.

Q. What change took place in January? Was it a withdrawal of the rate or a change of the rate, and to what extent?

2730

A. Why, the taking away of the equalization of the short haul.

Q. Did that operate to increase very sharply the freight rate from Fergus Falls to Moorhead on the Northern Pacific Railway?

A. Yes, sir, it would.

Q. It increased the rate so as to make it practically prohibitory, did it not?

2731 A. Well, I couldn't say as to that.

Q. Did it increase it?

A. It increased it, yes, sir.

Q. To what extent?

A. I couldn't answer that question. I couldn't give you the rate over either road. I have a cashier that handles that matter.

Q. Can you give it approximately?

A. Well, no, I couldn't, to tell the truth.

Q. Prior to this letter of instructions which you refer to,
2732 state whether or not the rate between Fergus Falls and Moorhead on each of those lines of railroad had been identical on this class of articles.

A. Well, they had not been identical in one way. That business was based on what we call a mileage tariff, but between competitive points we equalized the shorter mileage of the competing road (that is as near as I can give it to you) and we charged the consignee the same rate.

Q. So you hauled from Fergus Falls to Moorhead by way of Wadena at precisely the same rate as the Great Northern did?

A. Yes, sir.

2733 Q. And that was modified in January, 1902?

A. Yes, sir.

Q. Have you that circular letter?

A. With me?

Q. Yes, sir.

A. No, sir.

Q. Have you that circular letter in your office?

A. I think that I have.

Q. Were you requested the other day by me to produce it?

A. Yes, sir. I thought I did not have it, and after you went away I hunted around and found it.

2734 Q. Why didn't you bring it?

A. What is that?

Q. Why didn't you bring it?

A. I wasn't requested to.

Q. Well, of course you thought you had destroyed it.

A. I thought at the time that I had destroyed it, yes, sir. That was my recollection. Part of what I told you is true. I had pinned the other to it. My recollection was that I had de-

stroyed it, but in an old letter file I found the two pinned to- 2735
gether, and I hadn't thrown it away.

Q. From whom did this circular letter come?

A. I think from J. O. Dalzell, division freight agent.

Q. He is your superior officer on the Northern Pacific road?

A. Yes, sir.

Q. Where is he located?

A. St. Paul.

Q. In the general freight office of the Northern Pacific Railway Company?

A. Yes, sir.

Mr. Douglas. Can't we agree that Mr. Stodder shall send 2736
that circular letter down by mail and that it may be identified and introduced as part of his evidence?

Mr. Young. I suppose so. I don't see any objection to that.

Mr. Munn. There must be a copy of it here.

Mr. Young. I don't know anything about it. I would like to see that circular letter before it is attached to the record, so as to identify it properly.

Q. You subsequently received a circular letter which modified this change which took place in January, did you not?

A. I subsequently received a letter, yes sir. Not a circular 2737
letter, but my recollection is that it was a personal letter.

Q. What did that purport to direct?

Objected to by defendants on the ground that it is incompetent to show the contents of a writing by parol testimony.

Q. Was the rate which was existing prior to January 1, 1902, restored about two or three months later?

A. Yes, sir.

Q. Also by a letter to yourself?

A. Yes, sir.

Q. You pinned this letter to the other?

A. Yes, sir. 2738

Q. Will you kindly produce, to have marked as Exhibits 27 and 28, both the circular letter and the personal letter to which you have referred and forward them to the reporter for the purpose of having the same placed in the record, the understanding being that it will be submitted to counsel on both sides?

A. Yes. To whom will I send it?

2739 Mr. Young. Send it to Mr. Ingersoll, I suppose.

Mr. Douglas. Send it to the Special Examiner, Mr. F. G. Ingersoll, New York Life Insurance Company Building, St. Paul.

The Examiner. When they come I will submit them to Judge Young, note his objection to them (if any) and incorporate them in the record.

Mr. Douglas. We want to see them before they are incorporated in the record.

The Examiner. Very well. When I receive them I will send them to you first.

2740 Q. Was this private letter to which you refer received from the same authority as the circular letter?

A. My recollection is that it was, yes, sir.

Q. Is each of them in the same condition now as it was when you received it?

A. Are they what?

Q. Have any changes been made upon them since you received them, of any note?

A. No, sir.

Q. At the time of receiving either of the letters to which
2741 your attention has been called, did you consult the Great Northern Agent at Moorhead with reference to them or either of them?

Objected to by defendants as incompetent and immaterial.

A. I don't know that we compared them, but I remember that we spoke about them, as having received them. But we didn't compare them, as I remember.

Q. When you received the first letter, which you call a circular letter, did you go over to the Great Northern Company's office and talk with the agent there with reference to this circular?

2742 Same objection by defendants.

A. No, sir. My recollection is that I met him on the street or else he was in my office. Either one or the other.

Q. Did he bring to your attention a like circular letter, or something of the same nature?

Same objection by defendants.

A. I don't recall that he did on that particular thing; but there were three other paragraphs in it that I remember we

talked upon. But of this one particular paragraph, of not 2743
equalizing the short haul, I don't remember whether we had any conversation on that or not, but we did on the other three paragraphs. I recollect that.

Q. You discussed the letters?

A. Yes, sir, we discussed the letter.

Q. Did you find that he had a like letter or a letter of like import to yours?

Same objection by defendants.

A. Yes, sir.

Q. Did you have any consultation with him when that rate 2744
was restored?

Same objection by defendants.

A. No, sir.

Q. Did you notify Beck & Wright of Moorhead of the taking off of that rate and of the restoration of it?

A. Yes, sir.

Q. I mean you personally?

A. Yes, sir.

Q. And you did that as the representative of the Northern Pacific Railway Company?

A. Yes, sir. 2745

By Mr. Munn:

Q. You speak about equalizing the short haul. I understand you to mean by that, that the distance being greater by the Northern Pacific than it was by the Great Northern between Fergus Falls and Moorhead, your distance tariff would be greater?

A. Our distance tariff would be greater, yes, sir.

Q. Therefore, when you say you equalized the short rate, you mean you reduced your tariff so as to make it the same over the Northern Pacific as it was over the Great Northern between those points? 2746

A. Yes, sir. Outside of a terminal tariff the rates are based upon what we call a mileage basis. Every five miles the rate increases. Between competitive points we equalize the Great Northern mileage. In other words, we base it upon the Great Northern mileage.

Q. That is, you couldn't get the business unless you did that?

2747 A. No, sir, of course not.

Q. And, in order to get the business, you reduce the rate, your distance tariff rate, so as to be the same as the rate by the shorter route?

A. Yes, sir.

Q. And that is what you mean by equalizing the short haul?

A. Yes, sir, equalizing the short haul.

Q. And when you say you received these instructions in January withdrawing that equalized rate, you mean that the distance tariff rate was restored on the Northern Pacific?

2748 A. The distance tariff rate was restored on the Northern Pacific.

Q. And the equalized rate withdrawn?

A. Yes; we would have to base our rate from Fergus Falls on the Northern Pacific mileage.

Q. And when that withdrawal was again withdrawn, you mean that the equalized rate was restored?

A. Yes, sir.

Q. That is, the competitive rate was restored?

A. The competitive rate was restored, yes, sir.

Q. So that in January the competitive rate was withdrawn

2749 and restored on again?

A. Yes, sir.

By Mr. Douglas:

Q. And that was between two and three months after its withdrawal?

A. My recollection is it was in March.

Q. That the rate was restored?

A. That we went back to equalizing the shorter haul.

No cross-examination.

LOUIS T. STODDER.

2750 Subscribed and sworn to before me this 12th day of December, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

2751 S. P. ROBERTSON, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

Examined by Mr. Douglas:

Q. Mr. Robertson, you are the agent of the Great Northern Railway Company at Moorhead, Minnesota?

A. Yes, sir.

Q. For how many years have you been the agent there?

A. Three years the 1st of December.

Q. Are you acquainted with Beck & Wright?

2752 A. Yes, sir.

Q. Do you know Mr. Stodder, the agent of the Northern Pacific at Moorhead?

A. Yes, sir.

Q. Did you hear the evidence of Mr. Wright and Mr. Stodder with reference to the modification of rates which operated upon the Northern Pacific between Fergus Falls and Moorhead?

A. Yes, sir.

Q. Calling your attention to a time about January 1, 1902, will you kindly tell us whether or not you received a circular letter, or a letter of instructions of any character, from your 2753 superior officer of the Great Northern Railway Company, modifying rates upon the Great Northern road between competitive points upon the Great Northern line and the Northern Pacific line in Minnesota or elsewhere?

A. I received a letter with reference to the longer haul.

Q. You did receive such circular letter?

A. Yes, sir.

Q. From what department did you receive it?

A. The general freight department.

Q. Have you such circular letter with you?

2754 A. Yes, sir.

Q. Will you kindly produce it?

Witness produces letter.

Q. This letter which you have produced, dated St. Paul, January 28, 1902, was it received immediately thereafter, by you?

A. As near as I can remember it.

2755 Q. Was the modification of the existing rate between points within your jurisdiction modified by operation of the directions contained in this circular letter?

A. Modification of our rates?

Q. Yes, sir. Did the modification take place pursuant to the directions contained in that letter?

A. No, sir.

Q. What is it?

A. No, sir. I know of no instance where they did.

Q. That applied to your station?

A. No, sir.

2756 Q. But you received instructions from your superior officer?

A. Yes, sir.

Q. And upon all shipments which might take place to or from any point you would be compelled to follow these instructions?

A. Yes, sir.

Q. Were the instructions contained in this letter which you have produced ever withdrawn or modified?

A. No, sir.

Q. This rate or this modification still stands in force (so far

2757 as the Great Northern Railway is concerned) at your station?

A. Yes, sir.

Mr. Douglas. I offer this letter in evidence and desire that it shall be identified as complainant's Ex. 29.

Q. Do you wish to retain this letter?

A. Yes, sir, I would like a copy of it.

Q. Is this the original or is it a copy?

A. That is the only one I have.

Mr. Young. This is the original. I object to this letter as immaterial.

Q. Mr. Robertson, the State Normal School is situated in

2758 Moorhead, is it not?

A. Yes, sir.

Q. I will ask you if since January 1, 1902, you have at any time, as an inducement to procuring either teachers in service at the Normal School at Moorhead, or scholars in attendance upon that school,—as an inducement to them to buy tickets and travel over the Great Northern Railway, offered them the use of parlor or special cars or the right to use chair cars of

the Great Northern Railway in returning from the school to 2759
their homes?

Mr. Young. That is objected to as entirely immaterial.

A. I don't think I ever made any offer of a special car to the teachers since that time, nor of a parlor car.

Q. Have you ever, since that date, January 1, 1902, offered any special inducements, such as the right to ride in a chair car on that road free of charge?

A. No, sir.

S. P. ROBERTSON.

Subscribed and sworn to before me this 12th day of Decem- 2760
ber, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

FRANK A. WELD, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

Examined by Mr. Douglas:

Q. What is your full name? 2761

A. Frank A. Weld.

Q. You are president of the Normal School at Moorhead?

A. Yes, sir.

Q. How many years have you occupied that official position?

A. I have been there since the summer of 1899.

Q. The Normal School is a state institution in this state?

A. Yes, sir.

Q. About how many pupils have you in this school at this time and about how many did you have a year ago? 2762

A. About 400, in that vicinity.

Q. How many teachers did you employ a year ago, and how many do you employ at this time?

A. I believe we had 17 a year ago this time; there are 19 now.

Q. How long have you been there, did you say, at Moorhead?

A. Since the summer of 1899.

2763 Q. I will ask you to state, Mr. Weld, the conditions existing at Moorhead with reference to the competition which has come under your notice for passenger traffic upon the Northern Pacific Railway and the Great Northern Railway passing out of Moorhead, covering this entire period in which you have acted as president of the Normal School, with reference to scholars and teachers attending the school or serving the school.

Mr. Young. That is objected to as incompetent and immaterial and calling for the mere conclusion of the witness.

2764 Mr. Douglas. I will modify the question so as to avoid the objection, if possible.

Q. What has been done under your observation by the agents of these respective railway companies at Moorhead with reference to inducing scholars and teachers of the State Normal School, going to their homes from Moorhead or returning from their homes to Moorhead, to travel over the lines of these respective roads, covering the entire period in which you have acted as president of the Normal School?

Objected to as incompetent and immaterial; especially as incompetent, on the ground of not being confined to matters 2765 within the personal knowledge of the witness.

A. I cannot relate to you in detail all that has been done. I can merely recall some noteworthy things, perhaps, which were done by representatives of the two roads. I believe it was in the fall of 1899 (last of August or the very first of September) that a party of students was taken to Moorhead from this part of the state. There were from 14 to 16 in the party. Nearly of them resided in the City of Stillwater. They were taken by the Northern Pacific Railway Company in a special car. I have forgotten whether the special car left the Union station in St. Paul, or whether it was run over 2766 to Stillwater by the Omaha road, to accommodate the Northern Pacific people. That as one instance.

Q. Was there any extra charge made for that?

A. Not to my recollection.

Q. That was in the fall of 1899?

A. Yes, sir.

Q. Has any like accommodation been extended since November 13, 1901?

A. No, sir. Similar accommodation was offered by the Great Northern that year, I think at Christmas time, when these young people returned to their homes. They were taken home in a special car. 2767

Q. What year was that?

A. The same year.

Q. 1899?

A. Yes, sir.

Q. Has any such inducement been offered or accommodation tendered to the students or teachers of the State Normal School at Moorhead since November 13, 1901? 2768

A. No, sir, not to my knowledge.

Q. What did you observe with reference to competition in the matter of returning students or teachers prior to November, 1901, between these two lines of railway? State just what you saw.

Objected to by defendants as incompetent and immaterial.

A. It is not altogether clear to me just what you wish me to say.

Q. What was the attitude of the agents of these respective roads? Did you receive calls from the agents of these lines of railway prior to November 13, 1901, with reference to procuring teachers and students to return by way of their respective routes? 2769

Objected to as immaterial and incompetent.

A. Yes, sir, I received calls from representatives of both of the roads.

Q. Who called on you and called on the different students, within your personal knowledge?

Same objection by defendants.

A. Mr. Dilling, of the Northern Pacific Railway Company was quite active in his efforts to secure business.

Q. Was he at that time the local agent of the Northern Pacific at Moorhead? 2770

A. Yes, sir.

Q. And who else called?

A. Of the Northern Pacific officials?

Q. Yes, sir.

A. I think not anyone representing the Northern Pacific line.

2771 Q. Who representing the Great Northern?

A. Mr. Robertson called upon me once or twice, and I think also one of their division passenger agents, or some official of that kind; Mr. Thorsen, I think is his name.

Q. Do you recall anyone else?

A. This is merely an impression,—if I may state an impression.

Q. Yes.

A. That some other traveling agent representing the Great Northern road called.

Q. Did Mr. Egan ever call?

2772 A. Possibly. I am not confident about that, but it seems to me I met Mr. Egan once in that capacity. But, then, that is only an impression.

Q. Did you ever observe any act, or anything, on the part of either the Great Northern agent or the Northern Pacific agent which was calculated to bring about travel over either of these lines of railway, prior to November 13, 1901?

Objected to by defendants as incompetent, immaterial and calling for the conclusion of the witness.

A. I don't know what you mean by "act."

2773 Q. What did these agents do, prior to the date to which I have called your attention, in the matter of procuring passenger service?

Same objection by defendants.

A. Usually they called upon me first, then called upon the various instructors in the Normal School, and sometimes upon the students.

Q. What did they say or what did they do?

Objected to by defendants as incompetent and immaterial.

A. Well, at one time I think Mr. Thorsen (this was in the case of Mr. Thorsen, if that is the right name) called at my

2774 office and asked for information regarding the probable destination of teachers and students. I gave what information I could to him, and suggested that he might meet the members of the classes who were going some distance to reach their homes. I recall that I called a meeting of such students, to accommodate Mr. Robertson and this Mr. Thorsen to whom I have referred. Just what they said to those students I do not know. I introduced the passenger agent to the

students after they had assembled in one of the rooms, and 2775
then went out and left them. I did not care to have any part in the transaction.

Q. Was it his purpose to procure the students to go back by way of the Great Northern?

Objected to by defendants as incompetent and immaterial.

A. Yes, sir.

Q. What about the Northern Pacific agent?

A. Well, the Northern Pacific agent never held any meetings of that kind or made any public demonstrations, but he usually got most of the business. 2776

Q. What has been the action or the attitude of the agents of the Northern Pacific and the Great Northern lines of railway since November 13, 1901, with reference to procuring the return of students or the return of teachers over those lines of railway?

Objected to by defendants as incompetent and immaterial.

A. Well, I have not observed any active competition. Mr. Robertson has not called upon me (so far as I recall) since that date. Neither has any representative of the Northern Pacific Railway, and yet our relations have been very friendly and pleasant and agreeable in every way. 2777

Q. Have you known of an instance in which the agent of either of these lines of railway has solicited the return of students or teachers since that date?

A. Oh, yes.

Q. Since a year ago?

A. Yes, sir.

Q. Has there been the same competition that there was before?

A. It does not seem to me that there has been anything like it. 2778

Q. Is it noticeable?

A. Yes.

Q. Have you known of any inducements being offered by way of permission to ride in parlor cars, without extra charge, since November 13, 1901?

A. I never knew that any such inducement as that was offered at any time.

2779 Q. Since November 13, 1901, has either of these agents brought tickets up to the school or to the homes of the students and checked baggage to their homes, or anything of that character?

Objected to by defendants as incompetent, irrelevant and immaterial.

A. Not to my knowledge.

Q. To your personal knowledge, did they do it before?

Same objection by defendants.

A. Yes, sir.

Q. You say they did before?

2780 Same objection by defendants.

A. Yes, sir.

CROSS-EXAMINATION.

By Mr. Young:

Q. It seems that in the fall of 1899 a party of students was taken to Moorhead, from somewhere in this vicinity, by the Northern Pacific in a special car?

A. Yes, sir.

2781 Q. How large was the party—a carload?

A. I think there were from 14 to 18 people.

Q. Did you have anything to do with procuring that car?

A. I am not sure whether I did or not, Mr. Young.

Q. Did you go in it yourself?

A. Oh, no, sir. I was at Moorhead. My impression is that I had some conference with some representative of the general passenger agent's office here in the City of St. Paul or with the agent at Moorhead in regard to that matter. But I can't recall whether I did or not. I should say that probably I did have something to do with it.

2782 Q. Was that an unusual transaction—taking them up in a special car?

A. Well, it is the only time, I think, in the history of that school, excepting the time that the Great Northern brought them back in a special car, that anything of the kind was ever done.

Q. The Great Northern did bring them back, on their return after Christmas in that year, did they?

2783

A. Yes, sir.

Q. And neither before nor since has there been anything of the kind, as far as your recollection goes?

A. No, sir, not as far as I know.

Q. Did these various solicitations of passengers, that you were acquainted with, or for students to go on their road involve a reduction of price below the published tariff rate?

A. Not to my knowledge.

Q. Both roads solicited to carry these students at their regular rates?

A. As far as I know, yes, sir. 2784

Q. That solicitation has not been so active within the last year, I think you said?

A. It does not seem to me that it has been.

RE-DIRECT EXAMINATION.

By Mr. Munn:

Q. You say they were carried back, during the holidays of 2785 1899, on the Great Northern?

A. Yes, sir; that is my recollection.

Q. Did the representative of the Great Northern call at the school or call upon you to make arrangements for that?

A. No, sir. The arrangement for that was made, I believe, by Mr. Thorsen, at the time to which I have referred, when I introduced him to the students assembled in a room for that purpose.

Q. That is, he was there then and offered to take them back in a special car if they would go by that route?

2786

A. Yes, sir.

Q. Was Mr. Thorsen residing at Moorhead?

A. I think not.

Q. Do you know where he resided?

A. No, sir.

Q. He came to see you about it, did he?

A. He came to the school to make arrangements for them.

Q. What did he say about being desirous of getting that

2787 business and being willing to do this provided they would go by the Great Northern route?

A. That is about all he said—that he would be willing to do just that thing in order to get the business. I took no part whatever in that matter.

By Mr. Douglas:

Q. For such accommodation ordinarily there is a charge made, isn't that true?

A. I don't know anything about that.

FRANK A. WELD.

2788

Subscribed and sworn to before me this 11th day of December, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

The further taking of testimony in this cause was ad-
2789 journed until the morning of Friday, December 12, 1902, at 10 o'clock.

Federal Building, St. Paul, Minn.,
December 12th, 1902, 10 A. M.

The taking of testimony was resumed at this time, pursuant to adjournment, all parties being represented.

Mr. Young. In regard to the exhibits 5 and 6 introduced yesterday, relating to receipts, etc., of grain in Minneapolis, and also in regard to similar statements with reference to
2790 Duluth and West Superior the defendants withdraw their objection to the competency of those, severally, but object to them and each of them on the ground that they are irrelevant and immaterial.

It is understood, of course, that all objections entered heretofore and which may be entered hereafter as to the testimony are made on behalf of all the defendants.

Mr. Munn. Oh, yes.

2791

O. C. BECK, a witness on behalf of the complainants, being duly sworn by the Examiner, testified as follows:

Q. Mr. Beck, you reside at Moorhead?
A. Yes, sir.
Q. And are in business there?
A. Yes, sir.
Q. What business are you in?
A. Furniture and undertaking.
Q. What is the name of your firm? 2792
A. Beck & Wright.
Q. Mr. Wright was here yesterday; is that the gentleman to whom you refer?
A. Yes, sir.
Q. Mr. Beck, do you have occasion in your business to have material that you use in your business shipped from Fergus Falls to Moorhead?
A. Yes, sir.
Q. Have you had for some years past?
A. Yes, sir.
Q. What do you have to have shipped from Fergus Falls to 2793 Moorhead, principally?
A. Especially coffins and caskets. There is a casket factory there.
Q. How many shipments a month would you ordinarily have?
Mr. Young. This is objected to by defendants as irrelevant and immaterial. And it will be understood that the objection will apply to all this line of testimony on the part of this witness.
A. Well, that is very hard to say. Some months there will 2794 be more shipments than others.
Q. Well, you have several during the year?
A. Oh, yes.
Q. About how many?
A. Well, that I never looked up.
Q. Do you have several a month?
A. Some months we would have five or six and other

2795 months not so many. Probably there may be a month when we wouldn't have one shipment.

Q. Prior to January 1, 1902, over what road or route did you ship material furnished by the firm in Fergus Falls and consigned to Moorhead?

A. We shipped over the Northern Pacific.

Q. Why?

A. One reason was we generally got it quicker that way.

Q. Do you know of any reason why you got it quicker that way?

2796 A. I understood they reloaded at Barnesville. That is the way I understand it.

Q. Who gave you that information?

A. I couldn't tell you that. It comes in carloads to Barnesville, and there is one branch that goes to Crookston and the other to Moorhead.

Q. Barnesville is on the line of the Great Northern Railway?

A. Yes, sir.

Q. And Barnesville is one of the division points of the Great Northern?

2797 A. Yes, sir.

Q. And you say you had your shipments consigned by the Northern Pacific because you got them quicker?

A. Yes.

Q. Was the rate the same prior to January 1, 1902?

A. Yes.

Q. Over each route?

A. Yes, sir.

Q. How long prior to that time had the rate been the same?

A. That I couldn't say.

2798 Q. For a long period?

A. I guess it has always been the same.

Q. Did you have any talk with the agent of the Northern Pacific Railway Company at Moorhead, sometime during the month of January, 1902, regarding the change in rate on the Northern Pacific between the points named?

A. Yes, I think I did.

Q. State what that conversation was, please.

Objected to by defendants as incompetent and calling for hearsay evidence. 2799

A. I think it was the last of January of this year.

Q. State what he told you, if anything, regarding the rate.

A. Mr. Stodder came into the office, as I understand, and he says, "After this you will have to ship your goods from Fergus over the Great Northern." And he said there was an understanding by the two roads going to the same point, where they used to compete, that the one that has the short haul should haul the goods.

Q. Did he say anything about the rate on the Northern Pacific, which had existed prior to that time, being withdrawn? 2800

A. Well, the way I understood him was this: if we wanted to ship by Wadena we would have to pay so much more freight rate.

Q. That is, if you wanted to ship by the Northern Pacific, which goes from Wadena, you would have to pay additional freight?

A. Yes.

Q. That is, you would have to pay more than you had been paying prior to that time?

A. Yes. 2801

Q. Now, can you give the rate that existed on the Northern Pacific at that time?

A. No, I cannot.

Q. Did you continue to ship by the Northern Pacific after that?

A. No, sir.

Q. Did you have any subsequent talk with the agent of the Northern Pacific at Moorhead regarding the restoration of the rate existing prior to January 1, 1902?

A. We shipped over the Great Northern during February and March, I think, of this year, and then Mr. Stodder—I think it was some time in April—said that the same rate was restored again and this order was declared off, so we could ship over his road again. 2802

Q. Ship over the Northern Pacific again?

A. Yes.

Q. Now, give the language used by Mr. Stodder, as near as you can remember it, in this last conversation.

2803 A. The words?

Q. Yes.

Same objection by defendants, and as incompetent.

A. Well, that is about as near as I can give it. He said that the order was rescinded and that we could ship over the Northern Pacific again, that the rates would be the same as on the Great Northern.

Q. Did you have any conversation with him at that time about the consolidation or the merger of the Northern Pacific and the Great Northern?

Objected to as incompetent, irrelevant and immaterial.

2804 A. That was the first time when he came in that he said we could not ship over the N. P. I said, "It looks like the merger has taken effect." He said, "It appears so." That is all the conversation there was.

Q. That might so appear to a man on the outside. How much longer did it take you, ordinarily, to get your freight shipped by the Great Northern than it took by the Northern Pacific between those two points?

Same objection by defendants.

A. Well, it used to take three or four days, sometimes five

2805 days.

Q. Three or four or five days on what road?

A. On the Great Northern. On the Northern Pacific, if the goods came to the depot before the freight went from Fergus to Wadena, we would get it the next day—about 24 hours.

Q. State whether or not during the time that this equal rate was withdrawn by the Northern Pacific you were obliged, in order to get your materials shipped from Fergus Falls, to have them sent to you by express.

Same objection by defendants.

A. Well, of course we generally keep a fair stock on hand,

2806 but it occasionally happened that we would have to get a case or two by express.

Q. That was on account of the delays which would occur on the Great Northern?

A. Yes. We would not take any chances on it. But those would be exceptions.

Q. Do you know what the difference was between the rate on the Northern Pacific prior to January 1, 1902, and the

rate that was in existence during this time of the with- 2807
drawal?

A. No, sir.

Q. Was it a higher rate? Was the rate in force during the suspension of the equalized rate higher than the rate which was in existence during the time of the equalized rate?

Same objection by the defendants.

A. We could not ship. If we would insist on shipping we would have to pay higher rates, that is the way I understood him. Either we could not ship at all or else we would have to pay higher rates. That I don't know, because I didn't in- 2808
quire.

Q. Do you know anything about the passenger rates existing prior to January 1, 1902, between Fergus Falls and Moorhead on those two roads?

A. No, sir.

Q. Did you ever travel by the Northern Pacific?

A. Yes, I have traveled by the Northern Pacific, but always on mileage.

Q. Always on mileage?

A. Yes.

Q. Did you also travel on the Great Northern? 2809

A. Yes, on mileage.

Q. What did they charge you in going between those points —the same, or different rates?

Same objection by defendants.

A. I couldn't say that because I wouldn't go straight through.

CROSS-EXAMINATION.

By Mr. Young:

Q. Since April, 1902, when you say you were told that the 2810
equalized rate was restored on the Northern Pacific, over which road have you made your shipments between Fergus Falls and Moorhead?

A. On the Northern Pacific.

Q. So that you are now doing business, and have since then, just as you had done before the change?

A. Yes, sir.

2811 Q. And when the change was made, the first change, you stated to the agent there that it looked as if the merger had taken effect?

A. Yes.

Q. How did it look when it went back to the original rate—as if the merger had ceased taking effect?

A. Well, that I couldn't tell you.

Q. You don't know how that looked?

A. I think I asked him some questions, but I guess he couldn't answer them; so I don't know.

2812 Q. What is the extent of your business? You say, for instance, that sometimes you have one shipment and sometimes more shipments a month. These were shipments of coffins, weren't they?

A. Yes, sir.

Q. About how many coffins a month did you have shipped to you on an average?

A. Well, sir, I couldn't tell you that. That is pretty hard telling.

Q. Did they come consigned to you at Moorhead, or any of them to points beyond Moorhead?

2813 A. No, come to Moorhead.

Q. Were any of these shipments in carload lots?

A. No, sir.

Q. All small lots?

A. Yes, local shipments.

O. C. BECK.

Subscribed and sworn to before me this 13th day of December, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

2814

ADDISON LEECH, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION.

By Mr. Douglas:

Q. Where do you reside, Mr. Leech?

A. Warren township, North Dakota.

Q. How long have you lived there? 2815

A. Nineteen years.

Q. What business are you engaged in?

A. Farmer.

Q. In partnership with any person?

A. My brother.

Q. That is Fin Leech?

A. Yes, sir.

Q. What is the size of your farm, Mr. Leech, and where is it situated?

A. Four sections in 138-50.

Q. That is in Cass county? 2816

A. Cass county.

Q. Will you please describe it with reference to its proximity to the Northern Pacific Railway Company and to the Great Northern Railway Company?

Objected to by defendants as irrelevant and immaterial.

The same objections, it is understood, will apply to all of the testimony on this point.

A. The southwestern branch of the Northern Pacific road at the station of Warren is two miles and a quarter directly south from the section on which my buildings are located, 2817 which is about the central point of the farm. The Great Northern is four miles and a trifle less than a half to the west of the same building site.

Q. You are at sort of an angle between the two lines of railway?

A. Yes.

Q. Four and a half miles distant from the Great Northern and two and a half from the Northern Pacific—that is your buildings?

A. Well, little less than two and a half; two and a quarter, about. 2818

Q. How long have you been engaged in farming there, Mr. Leech?

A. I personally have been there since 1883. My father and brothers bought this farm in 1881, and began farming operations. While I was not there, I was a member of the firm, although a minor. The business was carried on for some

2819 years under the name of Addison Leech, my father. It was then turned over to my brothers and myself.

Q. What is the chief production of the farm?

A. You mean during those 22 years, or this year, or what?

Q. During the past 15 or 20 years?

A. Wheat.

Q. And you consign it to what market?

A. Principally to Duluth. That depends largely on the market. Either to Duluth or Minneapolis.

Q. And over what lines of railway?

2820 A. Principally over the Great Northern, that is the bulk of the crop has gone over the Great Northern.

Q. What arrangements were made by the Great Northern by way of receiving this grain of yours, which have been in force for the past 15 or 20 years? In other words, what accomodations have they furnished you for the shipment of your wheat?

Objected to by defendants as irrelevant and immaterial.

A. About 15 years ago the Great Northern built a spur track from Addison station, four miles and a half west of the building site, to the middle of section 20, or a spur track
2821 about four and a quarter miles long, with a side track at the end of the spur; and they always kept us supplied with cars up until about the 10th or 12th of September of this year.

Q. Did your firm do anything in the way of building this railway, furnishing its roadbed or anything of that sort?

A. We furnished the right-of-way and put up the grade, hauled most of the ties and I think a portion of the iron. That is, we furnished teams for a day or two when they first started their work.

Q. Did you deed the right-of-way to the Great Northern Railway Company, or to its predecessor, the St. Paul, Minne-
2822 apolis & Manitoba Railway Company?

Mr. Young. This testimony is objected to by the defendants on the further ground that it is incompetent, irrelevant and immaterial, for the reason that it has to do with matters outside of the State of Minnesota and is concerned wholly with interstate commerce between the State of North Dakota and the State of Minnesota.

A. We deeded it to the St. Paul, Minneapolis & Manitoba 2823
Railway—the entire right-of-way.

Q. The Great Northern is the lessee of the Manitoba Company?

A. I believe so.

Q. Did this railway company or any other company pay you anything for the right-of-way?

Same objection by defendants.

A. One dollar. At least, it is so stated in the deed.

Q. Was the dollar paid?

A. Not yet. 2824

Q. Was any agreement entered into or any understanding had between your firm and the Great Northern Railway Company or the St. Paul, Minneapolis & Manitoba Railway Company with reference to the shipment of grain produced on this farm, in consideration of the extension of this side track up into your farm? If so, what?

Objected to by defendants as before and as not the best evidence.

A. I am not sure that I understand your question.

Q. What was the purpose of building this side track?

A. To secure to the Great Northern the shipment of Leech 2825
Bros. or Addison Leech and Sons' wheat or grain or other shipments.

Q. And from that time until this year you have shipped over the line of the Great Northern Railway, since its organization, all the wheat produced on your farm?

A. Almost entirely all of our wheat. Occasionally we ship a few cars over the Northern Pacific. Up until a few years ago we had a very much larger farm, and two or three sections of it was rather close to the Northern Pacific road. Some years I have shipped ten, twenty or thirty cars over the Northern Pacific Railroad. 2826

Q. Because some parts of the farm happen to be closer to that railway?

A. Well, it was a little more convenient, yes.

Q. But you say the great bulk has been shipped over the Great Northern Railway?

A. Yes, the great bulk of it.

2827 Q. How much wheat does your farm produce a year, which you have shipped over the Great Northern Railway?

A. Anywhere from 10,000 to 150,000 bushels.

Q. What has been the average production of your farm?

A. Do you mean for 22 or 23 years?

Q. Going back 10 or 15 years.

A. Oh, probably 17 or 18 bushels to the acre.

Q. Can you make a general statement as to how many cars that would be?

A. Well, the cars will run from 500 to 1,100 bushels to a car.

2828 Q. How many acres have you had in wheat?

A. What year?

Q. How many acres did you have in wheat this last year?

A. About a thousand.

Q. How much in flax?

A. About 450.

Q. Ship any oats that you produced?

A. No, sir.

Q. How have prior years compared with this year?

A. As to acreage?

2829 Q. Yes, as to the acreage that you have produced.

A. I have had as high as 6,800 acres in wheat.

Q. Generally speaking, how much have you raised to the acre in the past 15 years?

A. Well, it would be hard to say, generally, because at one time we were farming close to 8,000 acres, and then other years we cut the acreage down. Along about 1890 we began cutting up the farm and selling it off, a quarter of a section and half a section at a time. Some years we would have a large acreage and some years a short acreage, depending on whether our farmers got stuck or not.

2830 Q. And this year you have four sections?

A. Four sections.

Q. 2,500 or 2,600 acres is the total of the farm?

A. 2,560 acres.

Q. Is it all under cultivation?

A. All but 168 acres.

Q. Did any change take place in your business arrangements this year?

A. With regard to this railroad? 2831

Q. Yes.

A. About the first of September.

Same objection as before by defendants.

Q. I will finish my question. State the conditions existing this year with reference to shipments.

Mr. Young. Same objection as heretofore, as incompetent, irrelevant and immaterial, and especially as relating to interstate commerce.

A. About the 10th of September I asked the agent at Addison to put in freight cars for the purpose of loading wheat. 2832

Q. Agent of what road? The Great Northern?

A. Addison is not an intersecting station. It is a station on the Great Northern. I think the next day they put in 12 cars. I loaded seven of these cars and partially loaded two others. The other three cars were in such bad order that it was out of the question to load them with grain. About the time I finished loading seven and partially loading two it rained rather hard and delayed us in threshing for a day or two, and I went down to Addison and asked them to set in 16 more cars, and waited for an answer. They told me that the cars would be in the following day at four o'clock, or about 2833 that. The following night, about half past nine or ten o'clock, a brakeman came over from the end of the spur and notified me to have those two cars finished by the following Monday, as the work train would be up to pull up the track. And I didn't get the 16 cars.

Q. What was done by the Great Northern Railway Company, one of the defendants in this action, in the matter of taking up that spur track the next Monday morning?

Mr. Young. Same objection as to the last question.

A. Well, they put in a work crew, with about fifty Dagoes, and pulled up the track. 2834

Q. The track was at that time removed, and of course you have had no use of it since?

A. Not much, no.

Q. Where have you been compelled to ship your grain (over what route) since?

A. The Northern Pacific, from the station of Warren.

2835 Q. What inconvenience does that place you to, if any, in the matter of the shipment of your grain?

Mr. Young. Same objection—incompetent, irrelevant and immaterial and relating to matters outside of this state.

A. An additional average haul of two miles and a trifle more, and the inconvenience of doing this loading at a distance of two miles and a half from our buildings instead of about a third of a mile.

Q. Is that in itself a serious expense?

A. Some little expense, yes.

2836 Q. Have you had any negotiations whatever with the Great Northern Railway Company since that time in reference to the transaction or the surrender of the right-of-way, or anything of that character?

Mr. Young. Same objection as to the last question.

A. I have.

Q. Please state what has transpired since by way of explanation of the conduct of the railway company in taking up the track, if anything.

Same objection by defendants.

2837 A. I wrote to the superintendent, and also wired him two or three times, regarding this old right-of-way. They had left the majority of the old ties on the right-of-way after pulling up the iron; and as I am farming on both sides of this track, the place where the track is bound to grow up into a weed patch, if left uncultivated. I wanted to know what they were going to do about the old ties. I couldn't get much in the way of an answer from them, except the roadmaster said he didn't know, he wasn't empowered to sell the ties, and didn't know what disposition the road would make of them. I then wrote to L. W. Hill, asking him what I could do with this old right-of-way, and if I could dispose of the ties or pur-

2838 chase the ties, that they might be of some value to me as firewood, but I was very anxious to get rid of them so that I could cultivate the right-of-way. A couple of weeks or so after I had written Mr. Hill I received a letter from the right-of-way and tax agent of the Great Northern road asking me what I thought of a proposition to buy the old right-of-way at $10 an acre, ties included. Well, I didn't think much of his proposition—considering that I had given them the right-of-

way, and I wrote to him to that effect. I received another 2839
letter from him saying that he would take the matter up; I think he said he would take the matter up again and see if the road wouldn't do something better for us. At the same time I wrote to W. E. Dodge——

Q. Who is he?

A. An attorney for the Great Northern road, I think. He is an attorney in St. Paul connected with the Great Northern road, anyway. I stated to Mr. Dodge the facts of our deeding the right-of-way to the railway company.

Mr. Young. The defendants make the further objection 2840
that the witness is giving by parol the contents of a writing.

Q. Did you receive an answer from Mr. Dodge?

A. Yes, sir.

Q. Have you that answer with you?

A. Yes, sir.

Q. Will you kindly produce it? Have you a copy of it also?

A. Yes, sir. Which do you want,—the original or the copy?

Mr. Douglas. Let me have both, please, and I will offer the copy and let you keep the original.

The witness produces papers. 2841

Q. This is the original letter, is it, received from Mr. Wm. E. Dodge?

A. It is.

Q. And this other is a copy of the letter?

A. Yes, sir.

Mr. Douglas. I offer in evidence a copy of the original letter as Complainant's Ex. 30.

Mr. Young. Better offer the original, and let the copy go into the record in place of it.

Mr. Douglas. Then, we offer the original letter in evi- 2842
dence, but will substitute a copy in place thereof.

Q. Had your firm any trouble of any character with the Great Northern road?

A. Trouble?

Q. Yes, prior to this time?

Same objection by defendants.

A. No, sir.

Q. Your relations have been pleasant?

2843 A. Oh, we have had one or two claims for excess freight and a claim for some demurrage charged, but those were all straightened out. We never had any trouble.

Q. Your relations with the Great Northern were pleasant?

A. Yes, sir.

Q. Mr. Leech, will you please tell us whether, prior to November 13, 1901, in fact, prior to 1902, the Great Northern road solicited your business?

Mr. Young. That is objected to as irrelevant and immaterial and as relating to matters outside of the State of Minnesota and matters of interstate commerce.

2844 A. They did.

Q. What did they do by way of soliciting the business of your firm?

Same objection by defendants.

A. Well, they usually sent a traveling freight agent—I don't know whether they sent him, but he usually came out once or twice each fall to see that we were supplied with cars and that we were shipping the grain over their road.

Q. Has anything of that nature occurred since?

A. Not this year. In fact, I am not sure that they had a

2845 representative out last year. I don't remember.

Q. Generally a representative did come once or twice or more times?

A. Yes.

Q. Have you recently had occasion to ship or attempt to ship over the line of the Northern Pacific Railway a number of carloads of horses to any place in Minnesota?

Mr. Young. Same objection as to the last question.

A. Yes, sir, two carloads from Warren to Farley, Minnesota.

Q. From Warren, North Dakota?

2846 A. From Warren, North Dakota. One of those cars was shipped in the name of Addison Leech and one was shipped in the name of Hector Barnes. Mr. Barnes was interested, and in fact he had the bulk of a second carload of horses, but I was in charge of the shipment.

Q. When did this shipment take place, or the negotiations which led to it?

A. About the 18th of November when I asked for a rate to 2847
Farley, and on the 1st day of December I shipped the horses.

Q. That is this year?

A. This year, yes, sir.

Q. Will you tell us whether [illegible]ley and this other station to which you refer are each on the line of the Northern Pacific system, so-called?

Same objection by defendants.

A. The station of Warren is on the southwestern branch of the Northern Pacific road. Farley is 13 miles north of Bemidji, on the Minnesota & International, but I believe that is 2848
a leased line of the Northern Pacific, although I think they run under separate management. However, they connect at Brainerd.

Q. You understand it is a part of the same general system?

Mr. Young. That is objected to as entirely incompetent.

A. I don't know. I know the Northern Pacific made me the rate to these points.

Q. Will you give us the details of this transaction?

Same objection by defendants.

A. You mean in the matter of obtaining this rate?

Q. Yes, just what took place, what was said between you 2849
and the agent of the Northern Pacific road.

A. I went to Mr. J. Johnson, the Northern Pacific agent at Fargo, and asked him for a rate from Warren, North Dakota, to Farley, Minnesota. He looked over his tariff sheet and said, "We have no rate. The only rate we have is from Fargo to Bemidji, $45." I asked him to wire Mr. Daizell and get a rate, and he did so, and telephoned me shortly afterwards that the rate would be $77.80.

Q. Per car?

A. Per car. As Warren is only 16 miles west of Fargo and 2850
Farley only 13 miles north of Bemidji, it struck me as being rather excessive. I objected to the rate, but Johnson said it was the best they could do.

Q. What is the distance between Fargo and Bemidji by this road?

A. Well, I am not positive; I don't know the distance from Fargo to Brainerd. From Brainerd to Farley I think is

2851 about 103 or 104 miles. I imagine that from Fargo to Brainerd it is about 140 miles.

Q. So that from Fargo to Bemidji is something over 200 miles?

A. Well, I should think it is over 200 miles.

Q. And the rate, then, for the 200 miles, was $45 and by adding 29 miles the rate was flushed to $77.80?

A. I think that is correct. Shall I go on?

Q. Yes, proceed.

A. A day or two later the traveling freight agent for Min-
2852 nesota, I think——

Q. Of what road?

A. Of the Northern Pacific road—was in Fargo and Mr. Barnes and myself both went at him about this freight rate. He said that if Mr. Dalzell had made the rate, why, he thought that was the best that could be done. I said to Mr. Barnes, "At that rate I can drive those 38 head of horses up to Farley a great deal cheaper than I can pay $77 a car." And Mr. Merritt (this agent) says, "Don't do anything until you hear from me. I am going in Monday and I will see if I cannot do something better on the rate."

2853 Q. Before having this talk with Mr. Merritt, did you say anything to him or to the local agent of the Northern Pacific Railway Company at Fargo with reference to shifting that shipment to the Great Northern line and send to Bemidji instead?

A. No, sir, because I didn't know how I could reach Bemidji. I didn't know that I could reach Bemidji on the Great Northern at that time.

The defendants interposed same objection to the foregoing question.

Q. Proceed with your answer.

2854 A. On Monday or Tuesday following my conversation with Mr. Merritt (which was on the Saturday previous) I had a telephone message from the agent's office at Fargo telling me that Mr. Dalzell would make me a rate of $60 a car from Warren to Farley if I would accept at once. I accepted it.

Q. But this rate remained intact until you threatened to walk your horses across the country?

Objected to by defendants as incompetent and immaterial.

A. Well, I wouldn't say that I threatened to do that. While talking with Mr. Merritt he said he was helpless; if Mr. Dalzell had made the rate he thought that rate would have to stand, and I said to Mr. Barnes, "I can drive those horses up on foot cheaper than I can pay $77 carload freight," and Mr. Merritt then said, "Don't do anything until you hear from me." I wouldn't like to say that I *threatened* to do this. 2855

Q. That was simply brought to their attention?

A. Yes.

Q. Mr. Leech, do you know the freight rate from Glendive, Montana, and other Montana points on the Northern Pacific Railway, for horses and cattle to St. Paul, Minnesota? 2856

Objected to by defendants as incompetent, immaterial and irrelevant.

A. I do not.

Q. At any time in the course of this transaction did you make any suggestion to the Northern Pacific as to the possibility of shipping by way of Crookston, or in any other manner, up into that same general country where Farley is situated?

Same objection by defendants.

A. I don't think I did. I am pretty positive that I didn't, because I didn't know that I could reach that country by the Great Northern at that time. 2857

CROSS-EXAMINATION.

By Mr. Young:

Q. At what time was it that the Manitoba Company put this spur track into your farm?

A. When the interstate commerce bill went into effect.

Q. In 1887? 2858

A. Yes, sir.

Q. About how many acres did you have in your farm then?

A. I think we had 7,700 acres, or about that.

Q. 7,700 acres?

A. Part of this was leased ground.

Q. And between that time and last year you raised at times as high as 7,000 or more bushels of wheat a year, didn't you?

2859 A. I think I said I shipped from 10,000 to 150,000. I didn't say that I raised that much.

Q. You shipped from your farm?

A. I shipped, yes.

Q. From 10,000 to 150,000?

A. Yes, sir.

Q. You have stated, I believe, that you had in former years as high as 6,800 acres?

A. In 1886 I think we had 6,800 acres in wheat, yes.

Q. And immediately following that, that spur track was put in—the following year, in 1887?

2860 A. Yes, in 1887. In time to ship wheat in 1887.

Q. And that continued down to 1901?

A. It continued down to 1902.

Q. 1902. How many acres did you say you had in wheat in 1886?

A. In 1886 I think we had 6,800 acres.

Q. And that continued down to 1902, at which time instead of having 6,800 acres you had only a thousand acres?

A. Personally, I had a thousand, but I shipped the wheat off of all this acreage just the same.

2861 Q. Personally you had 6,800 acres before, didn't you?

A. Yes.

Q. In 1886. And personally you had a thousand acres in 1902?

A. Yes, sir.

Q. And then they took up the sidetrack?

A. Yes, sir.

Q. Is it customary for two or three miles of spur tracks and sidetracks to be put into Dakota farms where there are a thousand acres in wheat?

A. I don't think it is.

2862 Q. You say it is two and a half miles or so from your buildings to the Northern Pacific. You are fully as favorably situated as the average farmer in North Dakota so far as access to railroads is concerned, are you not?

A. Yes.

Q. You are better off than most of them, are you not?

Objected to by complainant as immaterial and not proper cross-examination.

No answer.

RE-DIRECT EXAMINATION.

By Mr. Douglas:

Q. Mr. Leech, you speak of having a thousand acres personally this last year in wheat; as a firm you had other grains in, had you not, such as flax, etc.?

A. Yes, sir.

Q. I will ask you if you had occasion to ship for other parties with whom you had business relations or contracts there.

Objected to by defendants as incompetent, irrelevant and 2864
immaterial.

A. Yes, sir.

Q. Were you, either as an individual or as the representative of those with whom you had contract relations, shipping approximately the same amount of wheat and from approximately the same amount of acreage as for 15 years before?

Objected to by defendants as incompetent, irrelevant, immaterial, leading and as not re-direct examination.

A. We sold the bulk of this farm on crop payments, and I control the crop off of almost the entire original farm. A por- 2865
tion of the sales of the original farm have been paid for and the parties have taken their deeds and I no longer control their shipments of grain. But I do control the shipments from about 4,000 acres of it, I think, still.

Q. And you were about to ship that this year, were you?

A. Yes, sir.

Q. How about other people using this spur track?

Same objection by defendants.

A. There were a few other farmers that used the track, probably 15 or 20.

Q. Fifteen or twenty other farmers whose lands were con- 2866
tiguous to this track, and they also loaded at your sidetrack upon the Great Northern Railway?

Mr. Young. Same objection by defendants, and also objected to on the ground the counsel is persistently leading his own witness.

A. Yes, these farmers loaded either at the end of the spur, where we had the platform, or at some other point along the

2867 spur. The road was very accommodating and would drop cars almost any place along this four miles and a half for those men to load.

Q. And how many farmers do you say were accommodated in that manner along the line of this spur?

Same objection by defendants.

A. Fifteen or twenty, I should say.

Q. Were these farmers, or most of them, in a position where they could reach either the Northern Pacific or the Great Northern railroad for their accommodation of wheat

2868 shipments?

A. No, sir. The majority of them would have to ship naturally over the Great Northern, anyway. The majority of those farmers were nearer to the Great Northern than they were to the Northern Pacific. A few of them were nearer the Northern Pacific than they were the main line of the Great Northern.

ADDISON LEACH.

Subscribed and sworn to before me this 12th day of December, 1902.

FREDERICK G. INGERSOLL,

2869 Special Examiner.

Mr. Munn at this time produces the letters which the witness Stodder referred to in his testimony and promised to forward to the Special Examiner. The same are offered in evidence by complainant as Complainant's Exhibits 27 and 28.

They are objected to by defendants as irrelevant and immaterial.

It is stipulated that Complainant's Exhibit 27 and Complainant's Exhibit 28 are the letters sent to each of the agents of the Northern Pacific Railway Company at the junc-

2870 tion points or stations named at the head of the letters, on the dates of the respective letters.

It is also admitted that Complainant's Exhibit 29, produced by the agent of the Great Northern Railway at Moorhead, was sent, by copy, to all agents of the Great Northern Railway Company at the junction points named in Complainant's Exhibits 27 and 28.

(Recess until 2:30 P. M.)

2871

EWALD WEIDEMANN, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION.

By Mr. Douglas:

Q. Your full name is Edward Weidemann?

A. Ewald Weidemann.

Q. Where do you live, Mr. Weidemann?

2872

A. I am living in the town of Glyndon, Clay county, Minnesota.

Q. That is how far southeast of the city of Moorhead?

A. Six miles and a half southeast of Moorhead.

Q. What business are you engaged in?

A. I am farming.

Q. How extensive is the farm that you are operating?

A. I am farming pretty near seven sections and a half.

Q. You are a farmer, and have been engaged in farming operations at that place for how many years?

2873

A. It is now 22 years.

Q. How far distant is your farm from the line of the Great Northern Railway extending across Clay county and running to Minneapolis and St. Paul?

A. The railway runs through one section of my land.

Q. Where is the sidetrack?

A. It is right on that one section; that is in the next town to Moorhead. The sidetrack is right on my land.

Q. What is that sidetrack now called?

A. The sidetrack is called Ruthruff.

Q. How far distant is that sidetrack upon the line of the Great Northern Railway from your buildings?

2874

A. One mile and three-quarters.

Q. How far distant from those buildings, as well as from the nearest point of your farm, does the Northern Pacific line of railway extend?

A. Three and three-quarters of a mile from my building.

Q. And how far is the nearest point of your farm to the Northern Pacific from the Northern Pacific?

2875 A. About three and three-quarters of a mile.

Q. Has the Northern Pacific a siding, from which grain is shipped upon its line of railway, at a point practically opposite the nearest point of your farm?

A. Yes, sir.

Q. What is that siding called?

A. Watts siding.

Q. How long has that siding been maintained by the Northern Pacific?

A. It was put in last fall, only that the sidetrack was changed a little, I should say about ten rods. Before that it
2876 was called Tenny siding. They moved it about ten rods, and now call it Watts siding, and they changed the freight rates about half a cent a hundred.

Q. Was it placed east or west of the old Tenny siding?

A. Just on the same siding.

Q. The same place?

A. Yes.

Q. How long has Tenny siding been maintained and used as a sidetrack by the Northern Pacific Railroad for grain shipping purposes?

2877 A. Since 1874.

Q. And how long ago was it that the Ruthruff siding was put in by the Great Northern?

A. That was put in in 1894.

Q. How far distant is the Ruthruff siding on the Great Northern from the city of Moorhead?

A. Five miles and a half.

Q. Ruthruff siding is not a village; there is nothing there except a bare sidetrack?

A. Just a bare siding, that is all.

Q. Is there another siding between the Ruthruff siding, so-
2878 called, and the city of Moorhead, on the line of the Great Northern?

A. No, sir.

Q. There is not?

A. No.

Q. Has grain been continuously shipped from both of these sidings, namely Watts siding and Ruthruff siding, for a great many years past by these respective lines of railway?

Mr. Young. That is objected to by the defendants, as incompetent, irrelevant and immaterial. The same objection will apply to all this witness' testimony. 2879

A. Yes, sir.

Q. Are you familiar with the conveniences in the matter of furnishing cars by the Great Northern Railway covering the period of the past 15 or 18 years?

Same objection by defendants.

A. Yes, sir, I am.

Q. Will you state briefly what the service has been in the matter of the furnishing of cars by the Great Northern Company at Ruthruff siding before and since November, 1901? 2880
Detail the nature of the service.

Mr. Young. Same objection, incompetent and irrelevant.

A. Well, before I always could get all the cars I wanted, and get them on very short notice, and this year I never could get a car. Always had to wait from eight to ten days before I ever could get a car.

Q. Prior to a year ago this November, in what condition were the cars which were furnished to you?

A. Always in pretty good shape and always put down there with sufficient grain doors to fix the cars up, but this year it was not so. 2881

Q. In what shape were the cars that were furnished to you this year?

A. The first cars that I got this year were coal cars, with dump doors, and they were broken. There were no grain doors in them and I could not get grain doors.

Q. Did you make application to the Great Northern Railway at Moorhead for grain doors?

A. Yes.

Q. What was their response? 2882

Objected to as irrelevant and immaterial.

A. The agent said he would send them out with the next train.

Q. When did they come?

A. The cars were there by Monday morning, and the grain doors came by Thursday morning, and some other cars, too. The other cars were in better shape, but they were 80,000

2883 pound cars. As I had not quite completed loading the first car, I commenced loading right into the new cars.

Q. Well, state just what you did by way of obtaining cars at this siding, what delays occurred and the reasons for such delays. Give us all the details, as compared with prior existing conditions.

Objected to by defendants as incompetent irrelevant and immaterial.

A. Well, that very day I got some new cars again, and also some grain doors. There were no grain doors in them, but I put grain doors in them, and commenced to fill them up with
2884 wheat. In the meantime I kept on fixing the first three cars, and by Saturday I had the new cars. They were 80,000 pound cars. I had them loaded, and by Saturday I had the three other ones loaded, and those cars that stood there from Monday (on which I had the fixing to do) I was charged demurrage on. I made complaint to the company.

Q. You were charged demurrage on those cars?

A. Yes.

Q. Without going too much into details (because that is not precisely what we are after), please state the details with ref-
2885 erence generally to the furnishing of cars to you upon request since that time.

Objected to by defendants as incompetent, irrelevant and immaterial.

A. I never could get any cars on short notice. Always had to wait from five to six and eight and ten days before I could get a car. And I never had a car again with what you may call grain doors in it, and I had to complain later on again about getting grain doors.

Q. What did you have to do about grain doors?

A. I furnished my own lumber and made grain doors, and I
2886 also went up again and got a couple of them.

Q. Sometimes you made grain doors?

A. Yes.

Q. Were you ever compelled before this time to manufacture grain doors for the cars of the Great Northern Railway?

A. Never.

Q. Did you make complaint to the agent of the railway company at Moorhead about furnishing these cars?

2887

Same objection by defendants.

A. Yes, sir.

Q. What was the effect upon your business of the delay in getting cars?

A. The result was that I lost about $500 in money.

Q. What did you have to do?

A. I always had to wait for cars, and had to put the grain into my elevator, and then re-load out of my elevator.

Q. Prior to November, 1901, were you able to obtain cars from the same railway company at the same siding?

Same objection by defendants. 2888

A. Yes, sir, I always could get all the cars I wanted.

Q. Prior to November, 1901, were you compelled to use your elevator as an intermediary except by way of shipping your grain?

A. No, sir.

Q. What conditions existed prior to November, 1901, in the matter of solicitation of your patronage by the agent of the Great Northern Railway Company?

Objected to by defendants as incompetent irrelevant and immaterial.

A. He had been out a good many times during the summer, 2889 and also the winter, and spoke about having that freight. Even the superintendent has been out on my farm several times and spoke to me about getting my freight.

Q. What division superintendent of the Great Northern Railway do you refer to?

A. I wouldn't know the division, but his name is Jenks.

Q. When was he there last?

Same objection by defendants.

A. Two years ago.

Q. When did the local agent of the Great Northern Railway Company call on you last for the purpose of soliciting 2890 freight?

A. Oh, he has been there every year until up to last spring. The spring before last was the last time.

Q. That would be a year ago last spring?

Same objection by defendants.

A. Yes.

Q. He has not been there during the past year, then?

2891 A. No, sir.

Q. Has any agent or person representing or purporting to represent the Great Northern Railway Company visited you at your farm or spoken to you anywhere in the matter of soliciting the shipment of your freight from that place or from any other place over the line of the Great Northern Railway during the past year?

Same objection by defendants.

A. No, sir.

Q. Prior thereto, he was there once or twice or three times a year soliciting your freight?

2892 A. Yes.

Q. Since one year ago you have been unable to obtain cars except upon long notice?

Objected to by defendants as incompetent, irrelevant and immaterial and as putting language into the mouth of the witness.

Mr. Douglas. I will withdraw the question. It is leading.

Q. What individuals representing the Great Northern Railway, such as division superintendents or agents, did you discuss this question of delays and imperfect service with during this past season, if any?

2893 Objected to by defendants as incompetent, irrelevant and immaterial.

A. As I did not succeed with our agent in Moorhead, I spoke to the superintendent through the telephone.

Q. Who was the superintendent?

A. Mr. Jenks.

Q. Where are his headquarters?

Same objection by defendants.

A. In Grand Forks.

Q. What did you say to him?

2894 A. I asked him why I didn't get cars, and that if I couldn't get cars I would have to send my grain over the other road.

Q. What other road did you refer to?

A. The Northern Pacific.

Q. What did he say to that, if anything?

Same objection by defendants.

A. "I don't care. Take it over there."

Q. What did he do then?

2895

Same objection by defendants.

Q. Did he continue the conversation longer, or did he hang up the telephone?

A. He hung up the telephone.

CROSS-EXAMINATION.

By Mr. Young:

Q. I think you said the Great Northern people did not come to solicit the shipment of your grain—since what date?

A. Since the spring. 2896

Q. Since the spring of what year?

A. This year.

Q. Of 1902?

A. Yes.

Q. But you shipped your grain over that road just the same, without solicitation?

A. Yes, sir. Not quite all, though.

Q. No.

A. But the most of it.

Q. Do you know whether or not this last season, this last autumn, has been one of great car shortage among the rail- 2897 roads?

A. That is what I have heard.

Q. That is what you have heard?

A. Yes.

Q. Do you remember any former years when there was a car shortage?

A. No, sir. I never thought there was a shortage on cars, because I remember several times I had three or four cars loaded on the sidetrack, and it took them three days to take them out.

Mr. Munn. When was that—this year? 2898

Witness. This year.

Q. You think that would not indicate an amount of business that might lead to a shortage of cars?

A. Well, if they needed cars they should have taken them right out on the next train.

Q. Provided their locomotives had nothing else to do.

A. Well, maybe.

2899 Q. It is just possible that the locomotives might have been so busy they could not come in and get your few cars?

A. Well, there were always trains going by. This fall I loaded a car of flax at Ruthruff siding; that was on a Friday, and also loaded a carload of oats at the station, and those two cars only went out by the next Tuesday morning, and I saw several trains going by there that could have taken them out.

Q. Do you know why they didn't take on your cars? Isn't it just possible that the trains were full?

A. I couldn't tell.

2900 Q. You couldn't tell whether those trains had their load or not?

No answer.

RE-DIRECT EXAMINATION.

By Mr. Douglas:

Q. I call your attention to your statement with reference to when the agent representing the Great Northern road last called upon you or spoke to you in the matter of soliciting your shipments. I think you stated a year ago last spring,

2901 but in your answer to Judge Young's question you said last spring. Will you please tell us what was the last date?

Same objection by defendants.

A. That was a year ago last spring.

Q. It was a year ago last spring?

A. A year ago last spring, yes, sir.

Q. Then he did not call upon you last spring?

A. He did not, no, sir.

Q. And has not solicited your freight since then?

A. Has not, no sir. Never spoke to me.

2902 Q. Since a year ago last spring?

A. Since a year ago last spring.

Q. About how many cars of grain do you ship annually?

Mr. Young. That is objected to as incompetent, irrelevant, immaterial, and not proper re-direct examination.

A. Of grain and potatoes I think I am shipping from 75 to 80 cars every year.

2903

RE-CROSS-EXAMINATION.

By Mr. Young:

Q. During this time that you had the trouble with the cars with dump doors and cars that didn't have grain doors, how many cars did you have at that time from the company that you had this trouble with?

A. I had three cars in the first place which I couldn't load; that was on Monday; by Thursday two more cars came.

Q. That is five? 2904

A. That is five. That is all I could get.

Q. And it was with those five cars that you had trouble at that time?

A. Yes.

EWALD WEIDEMANN.

Subscribed and sworn to before me this 13th day of December, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

2905

JOHNSTON WAGNER, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

By Mr. Douglas:

Q. Your full name is Johnston Wagner?

A. Yes, sir.

Q. What is your business? 2906

A. Farming.

Q. Where is your place of residence?

A. Moorhead.

Q. Where is your farm situated?

A. Northeast of Moorhead.

Q. How long have you been engaged in farming operations at that place, Mr. Wagner?

A. Since 1880.

2907 Q. Are you familiar with the conditions existing as to the method and manner of shipping grain, the conveniences furnished by the railroad companies for the shipping of grain at those points?

A. I am.

Q. And at points adjacent thereto?

A. Yes, sir.

Q. How near to your farm are the nearest sidings upon the lines of the Great Northern and the Northern Pacific?

A. Lamb siding on the Great Northern and Dillworth on
2908 the Northern Pacific; they are just about the same distance from my farm.

Q. Lamb siding is how far north of Moorhead?

A. A trifle over four miles.

Q. And Dillworth siding, on the Northern Pacific, is how far east?

A. Three miles.

Q. I believe that each of those places are bare sidings; they are not villages, there are no houses there?

A. Bare sidings.

Q. Has each of them been used by these respective railway
2909 companies for the purpose of shipping grain in carload lots and receiving it from farmers?

A. Yes, sir.

Q. For about how many years?

A. The Dillworth siding was put in there, I think, in about 1881; Lamb siding—well, I don't just remember when Lamb siding was put in. That road was built later. I don't remember when that road was built—I mean the Fosston branch, but it was put in, I think, the second year after the road was built.

Q. The siding has been maintained for a great many years?

2910 A. Oh, yes. I have hauled there for 11 years.

Q. I will ask you to state generally what conveniences had been furnished to the shippers of your community (yourself and other shippers) during the past year by the Great Northern Railway Company as compared with the conveniences furnished prior to a year ago. Give the details, referring to both before and after November, 1901.

Objected to by defendants as incompetent, irrelevant and immaterial.

A. Well, we have had always very good accommodations 2911
there, on both sidings and this year we were bothered somewhat more than we were before. The excuse always made was that they didn't have the cars. One day in particular I drove up to the siding, or, rather, up to Moorhead from the siding, and waited there for cars. The agent said, "We will take down anyhow four cars." There were three or four parties there besides myself loading at that siding. The switch engine came over and went up onto the transfer, to get cars, as the agent said. There were one or two cars up at the elevator. "Well, now," I said, "are you going to send those cars 2912
down sure?" "Why," he said, "the engine has gone up for them."

Q. They were in the yard there at the time?

A. That is what the agent said. And for fear that he would send them down there if I waited any longer—I was afraid to wait any longer, for fear they would get down ahead of me and the other parties would get them—I drove down as fast as I could, and my neighbors and myself sat there and waited, and no cars came all day. That is the only day that we were badly disappointed in receiving cars.

Q. Was there delay, generally speaking, at different times 2913
during this year, or not?

Objected to by defendants as leading.

A. Well, we were a little short of cars, but they were made good. They ran their switch engine out once or twice with cars expressly for us this year. But heretofore they used to run their switch engine out pretty nearly every day.

Q. Was there any solicitation of your freight this year by the Great Northern Railway Company?

Objected to as incompetent, irrelevant and immaterial.

A. No, sir.

Q. And your requests prior to this year were honored 2914
promptly?

Objected to by defendants as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. State whether or not prior to this year there was solicitation by the Great Northern Railway agent for your patronage, year by year, constantly.

2915 Objected to by defendants as incompetent, irrelevant and immaterial.

A. By the local agent, yes.

Q. To what extent did this solicitation exist prior to this past year, if at all?

A. Well, he would say to me, "When you get to threshing let me know, we will take care of you in the matter of cars. I want all I can get from you."

Q. Did you have any conversation with the agent this year with reference to delays?

2916 Same objection by defendants.

A. Yes, sir.

Q. What was said by the agent?

Same objection.

A. Well, in one instance I said, "From that farm I am threshing on it is about two miles further haul to the Northern Pacific, but I am afraid I will have to haul my grain there." He said, "Now, Wagner, I don't like to have you do it, but you will have to do the best you can."

No cross-examination.

JOHNSTON WAGNER.

2917

Subscribed and sworn to before me this 13th day of December, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

The complainant offers in evidence the map for the year 1901 of the Railroad and Warehouse Commission of the State of Minnesota, showing the lines of the Northern Pacific and the Great Northern Railways in the State of Minnesota, as
2918 well as all other railways in the State of Minnesota, being the map referred to by Mr. Hill in his testimony given in Minneapolis.

Received without objection and marked complainant's Exhibit 9.

At this time the further taking of testimony in this cause was adjourned, by consent of all parties, to December 16, 1902, at 10 a. m., in the Federal building in the city of St. Paul.

2919

Federal Building, City of St. Paul,
December 17, 1902, 10 A. M.

The hearing was resumed before the Special Examiner pursuant to adjournment.

THEODORE F. KOCH, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION.

2920

By Mr. Munn:

Q. Mr. Koch, you have been engaged in the farm land business for several years?

A. Yes, sir.

Q. With your headquarters here in St. Paul?

A. Yes, sir.

Q. Have you been buying and selling farm lands extensively during this time?

A. Yes, sir.

Q. In what state, principally?

2921

A. Minnesota.

Q. In what portion of Minnesota?

A. In the counties of Renville, Kandiyohi, Chippewa, Kittson, Murray, Pine, Kanabec, Mille Lacs and Morrison; that is where I bought most of the land.

Q. State whether or not lands which are situated so as to be contiguous to or reached by two or more railroads which are in competition with each other are, in your opinion, more valuable and more saleable than lands which are situated so as to be reached only by a single road or by two roads which are not in competition with each other?

2922

Objected to by defendants as incompetent, irrelevant and immaterial.

A. Yes, sir.

Q. In your experience in dealing in farm lands, state whether or not you have had occasion to learn and do know whether or not lands situated as I have described are more valuable than those which are not contiguous to or reached by competing lines of railway.

2923 Same objection by defendants.

A. I have found that lands which have two competing railroads can ship their produce to better advantage than lands which are only reached by one railroad, and in that way they reflect on the value of the land.

No cross-examination.

The parties to this cause hereby waive the reading over, signing and subscribing in the presence of the Examiner of the testimony of the foregoing witness.

2924

S. A. HOYT, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION.

By Mr. Munn:

Q. Mr. Hoyt, what is your business?

A. Farm lands.

Q. How long have you been engaged in that business?

2925 A. About seven years.

Q. State generally what has been the extent of your business experience with farm lands.

A. Well, it has been North Dakota and Minnesota principally, some business in Iowa.

Q. Dealing largely in farm lands?

A. The last four years, yes, sir, quite extensively.

Q. How extensively?

A. We have sold out something like 250,000 acres in the last two or three years.

Q. Are you more or less familiar with the value of farm lands as affected by their location in connection with railroads?

Objected to by defendants as incompetent, irrelevant and immaterial.

A. In Southern Minnesota I am, yes, sir; in Martin county and in Faribault county.

Q. State whether or not, in your opinion, lands which are reached by two or more railroads in competition with each

other are more valuable and more saleable than lands which 2927
are reached by only a single railroad or by two roads which are not in competition with each other.

Objected to by defendants as incompetent, irrelevant and immaterial.

A. I think they are, yes, sir.

Q. State whether or not that has been your experience in dealing with farm lands.

Same objection by defendants.

A. It has.

Q. Give the reasons on which you base your opinion, and 2928
also your experience.

Same objection by defendants.

A. Well, in Faribault county my experience has taught me that the lands sold for from $10 to $15 more an acre where the Northwestern and the Milwaukee roads come in competition with each other than they did in Martin county where the Milwaukee was there alone, where there was no other road excepting the Milwaukee road; and afterwards, when the St. Louis and the Northwestern came into that county, they advanced about $15 per acre.

Q. What was the character of the lands as related to each 2929
other in those two counties?

A. They were about alike, very nearly alike.

No cross-examination.

The parties to this cause hereby waive the reading over, signing and subscribing in the presence of the Examiner of the testimony of the foregoing witness.

FRANKLIN BENNER, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows: 2930

DIRECT EXAMINATION.

By Mr. Wilson:

Q. Mr. Benner, you reside in Minneapolis?

A. Yes, sir.

Q. What is now and has been for some years your business?

A. Real estate and farm lands.

2931 Q. Farm lands exclusively, or other property as well?

A. Other property, but principally farm lands.

Q. In what states?

A. Minnesota and the Dakotas.

Q. About how much land have you now in charge in which you are personally interested or interested simply as agent, under your control, and where are those lands situated?

Objected to by defendants as incompetent, irrelevant and immaterial.

A. Somewhere about 70,000 acres.

2932 Q. About 70,000 acres of farm lands?

A. Yes.

Q. About what proportion of the 70,000 acres are located in the State of Minnesota and what proportion in the other states that you have mentioned?

A. Something about 45,000 in Minnesota, 14,000 in North Dakota, and somewhere about five or six thousand in Wisconsin and South Dakota.

Q. I suppose it goes without saying or without testimony that lands of the same quality which are contiguous to rail-

2933 roads or within a reasonable distance of railroads and those that lie at such a long distance from any railroad that it makes it expensive to market the product of the land or lands lying at such a long distance, have little value as compared with lands adjacent to the market.

Mr. Young. If that is the question, we object to it as incompetent, irrelevant and immaterial.

Mr. Wilson. That is a matter largely of argument.

A. Well, it is always considered a good talking point to say the land is near two railroads. It is better to say it is near two railroads than to one. It is considered good argu-

2934 ment in favor of selling.

Q. Well, it does, as a matter of fact, affect very largely the market value?

A. It certainly appreciates the value of land.

Q. What is the effect upon lands lying adjacent to competing lines of railway?

Objected to by defendants as incompetent, irrelevant and immaterial.

A. The farmer always considers that he has two markets 2935
to go to instead of one. If he cannot get his price at one, he can get a better price at the other, the distance from the center being equal. The distance has an effect upon the freight. The stations being equal the farmer chooses first one, and then the other.

Q. That is where railroads are in competition for freight?

A. Yes, sir.

Q. You have spoken of distances. Does competition itself bear upon or reflect upon the market value of the lands—the saleability?

2936

Same objection by defendants.

A. I think it does.

Q. Is it not a fact, to your knowledge, Mr. Benner, that at points which, in competition with competing lines of railroad, like the Great Northern, the Northern Pacific and the Soo, that the freight rate from such points is considerably less than it is at points adjacent to junction points, but at which there is no competition?

Mr. Young. Same objection. It does not appear that this is a subject upon which the witness has information.

Q. You may state whether you have any knowledge on that 2937
point, and what the effect is.

Same objection by defendants.

A. I have no experience at all in shipping freight myself; I merely know from hearsay that farmers prefer to locate near competing points of railways.

Q. I do not know whether you know or not, but is it not a fact, selecting a given point for illustration, for instance, Valley City in North Dakota, where the Soo Railroad crosses the Northern Pacific, that the rate of freight from that point to Minneapolis or to Duluth, as the case may be, while it is the same on both roads, that it is much less or considerably 2938
less than it is at points near to Valley City on the Northern Pacific Railroad?

Objected to by defendants as incompetent, irrelevant, immaterial and leading.

A. From hearsay I understand it is.

Q. Now, is it not a fact within your knowledge that the market price of farm products, wheat and other cereals, at

2939 points throughout Minnesota and North and South Dakota, is determined by the market price, say of wheat, in Minneapolis or Duluth, as the case may be, less the freight charge from that point?

Objected to as incompetent, irrelevant, immaterial and leading.

A. That is supposed to be the fact, in the matter of selling grains especially.

Q. And the market value of farm products, therefore, taking that to be true, would be increased just to the extent that the freight rate is less, would it not?

2940 Same objection by defendants.

A. Yes, sir, on grain.

Q. And that being true, what effect would it have upon the market value of lands tributary to a given point?

Same objection by defendants.

A. The farmer would always seek lands where his crops would bring the highest price when ready for market.

Q. You have been, as I understand you, buying and selling farm lands very extensively in the three states that you have mentioned, for several years past, have you not?

2941 A. Yes, sir.

No cross-examination.

The parties to this cause hereby waive the reading over and signing and subscribing in the presence of the Examiner of the testimony of the foregoing witness.

W. P. CHRISTENSEN, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

2942 DIRECT EXAMINATION.

By Mr. Douglas:

Q. What is your business, Mr. Christensen?

A. Dealing in real estate and farm lands, generally.

Q. How long have you been in that business?

A. More or less for twenty years.

Q. How long have you lived in Minnesota?

2943

A. Since 1868.

Q. Where do you now live?

A. I live in Olivia, Renville county.

Q. Are you familiar, in a general way, with the values of farm lands throughout the state and particularly in the northern part of the state?

A. I am.

Q. Have you been dealing extensively in this class of lands and real estate during the past 15 or 20 years?

A. I have dealt considerably in lands in Renville and Redwood counties, and some in the northern part also.

2944

Q. And you are still engaged in that business exclusively?

A. Still in the business.

Q. Do you know what is the general effect upon market values throughout the State of Minnesota; of proximity of lands to a line or lines of railway?

Objected to by defendants as incompetent, irrelevant and immaterial.

A. I do.

Q. What effect has such proximity of railroads upon the market value of lands?

Same objection by defendants.

2945

A. The value of land that is in close proximity to a railway is considerably more than land which is farther off.

Q. The value, you say, is increased?

A. Yes, sir.

Q. Arising from the proximity to a railroad?

Same objection by defendants.

A. Yes.

Q. What would you say with reference to the effect of proximity of lands to two competing lines of railway?

Objected to by defendants as incompetent, irrelevant and immaterial.

2946

A. We find that in general where there are competing lines, the land located close to the two lines is of considerable more value than land lying close to one single line of railroad.

Q. Then, if I understand you correctly, proximity to competing lines of railway adds materially to the market price or value of lands in Minnesota?

2947 Same objection by defendants.

A. Yes, sir.

No cross-examination.

The parties to this cause hereby waive the reading over and signing and subscribing in the presence of the Examiner of the testimony of the foregoing witness.

Mr. Munn. Now, Mr. Examiner, we offer in evidence as Ex. 8 the trust deed securing the collateral or convertible certificates issued by the Northern Pacific Railway Company to retire the preferred stock of that company (being Ex. C in the
2948 Federal case). We offer as Ex. 12 the by-laws of the Northern Securities Company (being Ex. K in the Federal case). We also offer as Ex. 21 the notice issued by the Northern Pacific Railway Company of the retirement of its preferred stock (being identified in the Federal case as Deft's Ex. 7); also as Ex. 22, the proceedings of the meeting of the board of directors of the Northern Pacific Railway Company, of December 11, 1901 (being identified as Deft's Ex. 8 in the Federal case); also as Ex. 23, notice issued by the Northern Pacific Railway Company that its preferred stock had actually been retired (being Deft's Ex. 9 in the Federal case); also as Ex. 24, the
2949 agreement between the Northern Pacific Railway Company and the Standard Trust Company under date of November 15, 1901, (being identified as Deft's Ex. 11 in the Federal case); also as Ex. 25, the agreement between Standard Trust Company and certain subscribers or underwriters, bearing date November 18, 1901 (and identified as Deft's Ex. 12 in the Federal case).

It is stipulated that complainant's Ex. 9, being map of the Railroad and Warehouse Commission of the State of Minnesota, for the year 1901, identified by Mr. Hill, is a correct map of the lines of railway shown thereon, and embraces all lines
2950 of railway then existing in the State of Minnesota.

2951 CHARLES F. STAPLES, a witness on behalf of the complainant, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION.

By Mr. Douglas:

Q. What is your residence, Mr. Staples?

A. I reside in Dakota county, just south of St. Paul.

Q. What official position do you now hold and have you held during the past two years?

A. Railroad and Warehouse Commissioner.

2952 Q. A member of the Railroad and Warehouse Commission of the State of Minnesota?

A. Yes, sir.

Q. As such are you familiar with all of the different lines of railway now existing in the State of Minnesota?

A. Quite so.

Q. As such have you had occasion to travel over all the lines of railway in the State of Minnesota?

A. Yes, sir.

Q. Your official duties call upon you to inspect all systems and all lines of railway in the state?

2953 A. Yes, sir.

Q. I will ask you if you are familiar with complainant's Ex. 9, being the map of the Railroad Commissioners of the State of Minnesota, so-called, issued in 1901?

A. Somewhat, yes, sir.

Q. Have you had occasion to examine it recently?

A. Casually; not particularly. I had no notice of being called here. I have not examined it with reference to testifying in any trial.

Q. I call your attention to this map, and ask you to state whether or not there are now any lines of railway existing in 2954 the north two-thirds portion of the State of Minnesota other than those appearing upon this commissioners' map, which is marked Ex. 9.

A. Our new map will show some extension that I can call to mind.

Q. What are they?

A. I recall an extension of the Minnesota & International.

Q. From the point that it appears on Ex. 9?

2955 A. Yes, sir.

Q. To what points?

A. Well, I recall an extension from the present terminal as shown on this map.

Q. What is that terminal?

A. Black Duck; something about 20 miles.

Q. In what direction?

A. Northerly.

Q. Are there any other extensions of any railway line appearing upon that map and which existed at the time that map was prepared?

2956 A. And which existed, did you say?

Q. Yes, at the time the map was prepared.

Mr. Young. The question is are there any extensions not shown on this map?

Q. Yes.

A. Well, there are none which were made at the time this map was made.

Q. I mean, have any been made since, except the one you have noted?

A. Yes, there have been.

2957 Q. Will you please describe them?

A. Well, there is an extension of a road which runs from Carleton north. As I say, I had made no preparation, and I do not like to give off-hand testimony. There is also a railway known as an electric railway which has been under consideration by the commission. Whether any portion of that road has been built or not I do not know. Permission has been given to increase the capital stock, and they made the statement that they were projecting the line. That is from Little Falls.

Q. But it has not been built, has it,—any part of it?

2958 A. Well, I couldn't answer that question.

Q. To the best of your information it has not been built?

A. It has not.

Q. What railway company owns the little extension from Carleton north, to which you called attention?

A. Well, I cannot tell. It is a logging road.

Q. Is it a private line?

A. No, sir, they have incorporated, but I can't give you the name.

Q. Is it known as a railway company, as a common carrier, 2959
or is it a private carrier?

A. When they made application for the purpose of increasing the bond issue, they indicated a purpose to make themselves public carriers.

Q. What is it used for solely?

A. Almost exclusively (and perhaps exclusively) for logging purposes.

Q. How long a road is that?

A. At that time it was, I think, from 20 to 30 miles.

Q. It is not a part of any system of railway at all? 2960

A. No, sir.

Q. And, so far as you know, it is used exclusively for private purposes?

A. Yes, sir. I might say that they stated to the Commission the purpose of incorporating was that a method of assessment was rather an imposition as they thought, and they became a public railway for that reason.

Q. Have they done any work as a public carrier?

A. I couldn't answer that question.

Q. Do you know of any other railway extensions that have been built or new lines of railway which have been con- 2961
structed in the State of Minnesota since the map has been prepared?

A. Yes; in the State of Minnesota, remember.

Q. In the northern half of the state?

A. No, sir.

Q. Do you know of any other extension or the construction of any other line or lines of railway which are within 20 miles of either the Great Northern or the Northern Pacific lines of railway since the map to which your attention has been called was prepared?

A. Not in the northern portion. In the southern portion 2962
we have the Rock Island, which has come in. That would naturally come within that answer.

Q. That is within the southern half of the state?

A. Yes.

Q. Where is that railway?

A. Well, that comes in from the south; it comes some distance; it follows the Milwaukee line.

2963 Q. Is it from St. Paul south on the southern boundary of the state?

A. Yes.

Q. Do you know of any changes since this map was prepared, from St. Paul westward and northward, in that portion of the state, except such as you have noted?

A. No, sir; I believe there have not been any.

CROSS-EXAMINATION.

By Mr. Young:

2964 Q. But you are not able to speak positively on that point without thorough examination, are you?

A. No, sir. There may have been some very short extensions; there have been no systems, I am positive of that. Perhaps there have been some short extensions on the logging roads, but not otherwise. I might, if permitted, correct what I think to be a misapprehension with regard to the road running north from Brainerd. I do not think that road is operated by the Northern Pacific. It is operated as a separate organization.

By Mr. Douglas:

2965 Q. Do you know with reference to whether the Northern Pacific owns substantially all of its stock?

A. The Northern Pacific owns 70 per cent.

Q. Seventy per cent of the stock?

A. Yes, sir.

Q. State whether or not it is managed in connection with the Northern Pacific system.

A. We consider it so in our office, yes sir. They have a general manager up there, however, and report as an independent organization. But the same officers, to a large extent, represent the two lines. The attorney for the Northern Pa-
2966 cific represents the Minnesota & International.

Q. And practically the same officers?

A. Practically the same.

The parties to this cause hereby waive the reading over and signing and subscribing in the presence of the Examiner of the testimony of the foregoing witness.

The further taking of testimony in this cause was, by consent of all parties, adjourned to December 29, 1902, at 11 a. m., in the city of New York, at the offices of the Northern Pacific Railway Company, 32 Wall street.

2967

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA.

STATE OF MINNESOTA

vs.

THE NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually.

2968

STIPULATION.

It is hereby stipulated and agreed by and between the parties to the above entitled action, that the further taking of testimony in this cause on the part of the complainant, which taking is now set down to be heard before the Examiner at New York City at 11 o'clock a. m. on the 29th day of December, 1902, may be adjourned by said Examiner from said day to 11 o'clock a. m. on Tuesday, January 13th, 1903, and to such place in said city as may be hereafter designated 2969 and fixed by said Examiner.

Dated St. Paul, Minn., December 26th, 1902.

W. B DOUGLAS,
GEO. P. WILSON,
M. D. MUNN,
Complainant's Solicitors.

C. W. BUNN, for Nor. Pac. Ry. Co.,
M. D GROVER, for Great Nor. Ry. Co.,
YOUNG & LIGHTNER, for Nor. Sec. Co.,
Solicitors for Defendants.

2970

In pursuance of the foregoing stipulation, it is hereby ordered that the further taking of testimony in said cause by the undersigned be and the same is hereby adjourned from December 29th, 1902, to January 13th, 1903, at 11 o'clock a. m., in the city of New York, at the general offices of the Northern Pacific Railway Company in said city, No. 49 Wall street.

FREDERICK G. INGERSOLL,
Special Examiner.

2971 Note by Examiner: Pursuant to adjournment the parties met in the City of New York on Jan. 13, 1903, and on that day and the following, took the testimony of George F. Baker and Samuel Thorne. By request of parties the testimony of these witnesses will be found on pages 402 to 434, inclusive. Sessions were also held in New York on January 15th and 16th; the testimony taken and proceedings then had have also by request been inserted on pages 664 to 674, inclusive, of this record. At the close of the session of January 16th, further proceedings were adjourned to
2972 January 26, 1903, at St. Paul, and the proceedings there follow.

Federal Building, City of St. Paul, January 26, 1903.

Pursuant to adjournment, this cause was called for hearing at the above time and place, and by consent of all the parties the further hearing of this cause was adjourned to Jan. 28, 1903, at 11 A. M., in the United States District Court room, Federal Building, St. Paul, Minn.

Federal Building, St. Paul, Minn., Jan. 28, 1903.

The hearing was resumed before the Examiner at the above
2973 time and place, pursuant to adjournment. All parties were represented.

It is stipulated that such tabulated statement of the officers and directors of the defendant companies as may appear in the record of the suit of the United States against those defendants and others may be made a part of the record in this case. If no such tabulated statement appears in the record of said suit of the United States, then the plaintiff herein may offer in evidence a tabulated statement of such directors and officers, prepared from the record in such case, the defendants reserving the right to object to the same when
2974 offered, as incompetent, irrelevant and immaterial.

Mr. Douglas. Reserving the right to offer a further statement in writing, by way of an admission on behalf of the defendants, in course of preparation by W. P. Clough, the State rests its case.

Thereupon the proceedings were adjourned until February 2, 1903, at 10 A. M.

COMPLAINANT'S EXHIBITS.

[Complainant's Exhibit 1.]

NAMES OF COUNTIES AND POPULATION OF THE COUNTIES NORTH OF A LINE DRAWN WEST FROM ST. PAUL, AS SHOWN BY THE U. S. CENSUS OF 1900.

County.	Population.	County.	Population.
Aitkin	6,743	Sherburne	7,281
Anoka	11,313	Stearns	44,464
Becker	14,375	Stevens	8,721
Beltrami	11,030	Swift	13,503
Benton	9,912	Todd	22,214
Big Stone	8,731	Traverse	7,573
Carlton	10,017	Wadena	7,921
Cass	7,777	Washington	27,808
Chippewa	12,499	Wilkin	8,080
Chisago	13,248	Wright	29,157
Clay	17,942	Cook	810
Crow Wing	14,250	Douglas	17,964
Grant	8,935	Hennepin	228,340
Hubbard	6,578	Isanti	11,675
Itasca	4,573	Kenabec	4,614
Kandiyohi	18,416	Kittson	7,889
Lake	4,654	Lac qui Parle	14,289
Marshall	15,698	Meeker	17,753
Mille Lacs	8,066	Morrison	22,891
Norman	15,045	Otter Tail	45,375
Pine	11,546	Polk	35,429
Pope	12,577	Ramsey	170,554
Red Lake	12,195	Roseau	6,994
St Louis	82,932		

2976

2977

JUNCTION POINTS OF N. P. AND G. N. RYS. AND POPULATION, 1900.

Town.	Population.	Town.	Population.
St. Paul	163,065	Wadena	1,520
Minneapolis	202,718	Glyndon	250
Coon Creek	40	Moorhead	3,730
Anoka	3,769	Crookston	5,359
Elk River	831	E. Grand Forks	2,077
Big Lake	177	Euclid	250
Becker	100	Red Lake Falls	1,885
Clear Lake	222	Cloquet	3,072
St. Cloud	8,663	Carlton	449
Morris	1,934	Short Line Pk	21
Sauk Centre	2,220	Duluth	52,969
Hinckley	459	Wrenshall	35
Fergus Falls	6,072		

2978

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[Complainant's Exhibit 2.]

STATE INSTITUTIONS.

The so-called "State Institutions" of Minnesota and the railroad lines upon which they are situated are as follows:

The State Capitol, St. Paul, reached by nearly all the railroad lines, including the Great Northern and Northern Pacific Railway Companies.

2980 The State University, Minneapolis, reached by nearly all the railroad lines, including the Great Northern and Northern Pacific Railway Companies.

The Soldiers' Home, Minneapolis, reached by the Chicago, Milwaukee & St. Paul Railway.

The State Agricultural College, Minneapolis, reached by the Northern Pacific.

The Normal School, Winona, on the Chicago, Milwaukee & St. Paul, Chicago and Northwestern, and the Chicago Great Western Ry.

2981 The Normal School, Mankato, on the Chicago and Northwestern, Chicago, Milwaukee & St. Paul, and the Chicago Great Western Ry.

The Normal School, St. Cloud, on the Great Northern and Northern Pacific.

The Normal School, Moorhead, on the Great Northern and Northern Pacific.

The Normal School, Duluth, on all lines entering Duluth.

The Hospital for the Insane, St. Peter, on the Chicago, St. Paul, Minneapolis & Omaha.

2982 Insane Hospital, Rochester, on the Chicago and Northwestern, and the Chicago Great Western.

Insane Hospital at Fergus Falls, on the Great Northern and Northern Pacific.

Asylum for Insane at Hastings, on the Chicago, Milwaukee & St. Paul.

Asylum for Insane, at Anoka, on Great Northern and Northern Pacific.

State Public School, Owatonna, on the Chicago, Milwaukee 2983
& St. Paul, and the Chicago and Northwestern.

School for the Deaf, Feeble-Minded, and School for the Blind at Faribault, on the Chicago, Milwaukee & St. Paul, and the Chicago Great Western.

The State Prison at Stillwater, on the Northern Pacific, and the Chicago, St. Paul, Minneapolis & Omaha.

The State Reformatory, St. Cloud, on the Great Northern and Northern Pacific.

State Training School, Red Wing, on the Chicago, Milwaukee & St. Paul, and the Chicago Great Western.

The total amount paid by the state of Minnesota for the 2984
buildings of the several state institutions up to July 31, 1902, is $10,232,690.90. The total cost of maintaining the several state institutions for the twelve months ending July 31, 1902, is $1,576,197.17. The cost for the support or maintaining the state institutions for the past five years will average about $1,500,000 a year. The total amount raised by the state by direct taxation for the support of the state government and state institutions is about $820,000 for the year 1902. The remainder of the income necessary for the support of the state government is derived from railroads and other cor- 2985
poration taxes and fees.

I hereby certify that the foregoing statement relative to the state institutions of Minnesota is substantially correct.

R. C. DUNN,
State Auditor.
By S. G. Iverson, Deputy.

St. Paul, Minnesota, Nov. 12, 1902.
(Seal of Auditor of
Minnesota.)

2986

[Complainant's Exhibit 3.]

The following statement of population, and supplies, purchased for the institutions named is based upon the records in the office of the Board of Control of State Institutions of the state of Minnesota, for the year ending July 31, 1902.

2987

	Inmates.	Supplies Purchased.
State Hospital, Fergus Falls.....	1,398	$112,754.90
State Reformatory, St. Cloud.....	192	35,666.92
State Asylum, Anoka	135	9,993.61
State Prison, Stillwater	553	56,187.54
State Normal School, Duluth	125	737.51
State Normal School, St. Cloud	300	4,381.83
State Normal School, Moorhead	300	6,209.91
	3,003	$225,932.22

2988

Of the above total purchases approximately 25 per cent, or $56,483.06, was purchased in the cities where the institutions are located; 64½ per cent, or $145,726.28, was purchased in the state of Minnesota outside of the institution cities; and 10½ per cent, or $23,722.88, was purchased outside the state of Minnesota.

I, S. W. Leavett, Chairman of the Board of Control of State Institutions for Minnesota, hereby certify that each of the
2989 above named institutions is situated upon both the Great Northern and Northern Pacific lines of railway, except the State Prison, which is situated upon the Northern Pacific alone; that all of such supplies are shipped over said lines; that the amount to be transported over said lines for the use of said institutions in the future will largely increase by reason of the continuous growth of such institutions; that the state of Minnesota pays all the freight for the transportation of such commodities and will continue so to do and that the same amounts to a large expenditure annually.

2990 I further certify that the foregoing statement is in all things approximately correct.

Dated at St. Paul, November 10th, 1902.

S. W. LEAVETT,
Chairman.

2991

[Complainant's Exhibit 4.]

APPROXIMATE AMOUNT OF LANDS HELD AND OWNED BY THE STATE OF MINNESOTA NOVEMBER 1, 1902.

Class of Lands.	Acres. Hdths.	Location of Lands, Etc.
Swamp lands and state institution lands	1,044,376.35	Located principally in Itasca, Cass, Aitkin, Beltrami, St. Louis and Lake counties.
University lands....	43,500.00	Located principally in St. Louis and central northern counties. 2992
Agricultural college lands, all sold:		
School lands and indemnity school lands	1,286,018.00	Located principally in northern and north central counties.
Internal improvement lands.....	25,000.00	
Public buildings land all sold:		
Salt spring land, no record in state land office, but lands are probably all sold.		2993
Total	2,198,894.35	
Estimated amount of swamp lands yet to accrue to the state.....	500,000.00	
Total acres....	2,698,894.35	Acres of all classes of lands.

SWAMP LAND AND SWAMP LAND GRANTS TO CERTAIN RAILROADS. 2994

	Acres. Hdths.
Total acres of swamp land received by the State of Minnesota from the United States to July 31, 1902..	3,902,923.57
Acres of swamp land granted to railroad companies by the State	2,858,547.22
Remaining to the State.....	1,044,376.35

2995 Acres of swamp land granted by the state to railroads in Minnesota owned, operated or controlled by the Great Northern Railway Company and the Northern Pacific Railway Company, and conveyed by the state to the grantees:

	Acres. Hdths.
Northern Pacific lines and branches:	
Little Falls and Dakota Rd. Co.	265,856.00
Lake Superior & Mississippi Ry. Co.	694,400.00
Taylors Falls & Lake Superior Railway Company	91,840.00
Great Northern Ry. Lines and branches:	
Minneapolis & St. Cloud Ry. Co.	425,664.00
2996	
	1,477,760.00

Lands granted by congress to the territory or State of Minnesota in aid of lines of railroad now owned, operated or controlled by the Northern Pacific Railway Company or the Great Northern Railway Company (and also lands granted directly by congress to the Northern Pacific Railroad Company in part subsequently obtained by the Northern Pacific Railway Company).

2997

LANDS OWNED, OPERATED OR CONTROLLED BY THE GREAT NORTHERN RY. CO.

Name of Grantee.	Line for Which Granted.	No. of Acres Conveyed to Grantees.
St. Paul & Pacific Railroad Company	Main and branch lines St. Vincent extension	3,223,169.03

LANDS OWNED, OPERATED AND CONTROLLED BY THE NORTHERN PACIFIC RY. CO.

2998

Name of Grantee.	Line for Which Granted.	No. of Acres Conveyed to Grantees.
Northern Pacific Railroad Company	(Within Minnesota) main line from Lake Superior to Puget Sound. Lands granted and conveyed directly to the company by the United States (estimate)	3,000,000

The following were granted by congress to the state and by 2999
the state to the respective companies:

St. Paul & Pacific R. R. Company, (Western R. R. Co., now St. Paul & Northern Pacific R. R. Co., successor)	Sauk Rapids to Brainerd.	89,483.03
St. Paul & Pacific R. R. Co. (Stillwater & St. Paul R. R. Co., successor)	Stillwater to St. Paul....	65,113.54
Lake Superior & Mississippi R. R. Co. (St. Paul and Duluth R. R. Co., successor)	St. Paul to Duluth.....	854,626.51

3000

SUMMARY.

	Acres. Hdths.	
Swamp lands granted by the State for lines now owned, operated or controlled by the Northern Pacific or Great Northern Railway Companies.....	1,477,760.00	
Lands granted by Congress directly to Northern Pacific Railroad Company (estimated).....	3,000,000.00	
Lands granted by Congress to the State in aid of lines owned, operated or controlled by the Northern Pacific or Great Northern Ry. Companies, and by the State granted to the original companies above named	4,276,638.48	3001
	8,754,398.48	

STATE AUDITOR'S OFFICE.

St. Paul, Minn.

This is to certify that the foregoing statements and figures have been compiled from the books and records of this office and are substantially correct.

3002

WITNESS my hand and official seal this eleventh (11th) day of December, A. D. 1902.

R. C. DUNN,

State Auditor and Ex Officio Commissioner State Land Office.

(Seal.) Per S. G. IVERSON,
Deputy.

[Complainant's Exhibit 5.]

Following statement shows the total grain and flax receipts in Minneapolis for five years:

Kinds of Grain.	1901.	1900.	1899.	1898.	1897.
Wheat, bu., all roads	90,838,570	83,312,320	87,961,630	77,159,980	72,801,530
Corn, do	7,868,750	6,502,410	7,277,380	4,586,140	4,063,830
Oats, do	10,718,880	10,837,160	11,013,930	10,478,390	16,636,640
Barley, do	4,999,160	4,551,970	2,552,980	1,789,710	2,683,740
Rye, do	1,202,040	509,730	658,560	1,140,570	1,061,240
Flax, do	7,069,940	5,993,410	4,207,400	2,899,450	3,041,660
Total	122,697,340	111,707,000	113,671,880	98,054,240	100,228,640

3004

RECEIPTS BY GREAT NORTHERN ROAD.

Wheat, bu., G. N.	30,455,550	24,513,000	27,658,780	20,710,840	20,948,860
Corn, do	791,630	788,370	900,310	469,540	211,300
Oats, do	933,440	174,680	551,180	411,450	478,710
Barley, do	1,788,350	955,300	851,300	388,830	78,090
Rye, do	227,590	145,810	122,560	127,110	95,700
Flax, do	2,519,040	1,671,860	868,260	276,940	191,060
Total	36,715,600	28,249,020	30,952,390	22,384,710	22,003,720

3005

RECEIPTS BY NORTHERN PACIFIC ROAD.

Wheat, bu., N. P.	5,052,390	3,051,210	4,626,170	2,306,150	4,853,340
Corn, do	16,520	6,500	5,870	3,950	3,920
Oats, do	31,880	5,550	3,640	5,040	6,280
Barley, do	86,240	25,830	6,090	7,050	8,700
Rye, do	32,760	10,410	8,590	.....	5,110
Flax, do	499,600	690,010	206,590	25,920	12,800
Total	5,719,390	3,789,510	4,856,960	2,348,110	4,890,150

3006

Total five years, G. N.	140,305,440
Total five years, N. P.	21,604,110
Total five years, both roads	161,909,550
Total received five years	546,359,100

Equal to 29½ per cent taken by G. N. and N. P.

Production in Minnesota, North Dakota and South Dakota as furnished by Agricultural Department at Washington, D. C., excepting 1901, which is a commercial estimate: 3007

MINNESOTA.

	1901.	1900.	1899.	1898.	1897.
Wheat	88,000,000	51,569,252	68,223,581	78,417,912	59,891,104
Corn	27,641,000	31,794,708	31,171,272	30,532,000	25,840,880
Oats	54,121,000	41,967,046	52,688,416	56,298,578	41,147,002
Barley	8,211,934	7,275,251	8,144,125	9,160,136	9,241,328
Rye	984,783	1,036,444	1,112,472	1,182,522	1,012,409
Flax, not reported					
Total	178,958,717	133,522,701	161,339,866	175,591,148	137,132,723

3008

NORTH DAKOTA.

Wheat	76,000,000	13,176,213	51,758,630	55,654,445	23,353,552
Corn	633,000	381,184	553,495	461,852	426,020
Oats	19,527,000	6,299,284	17,987,670	15,060,591	11,397,144
Barley	6,224,132	1,998,840	5,909,352	5,252,755	4,663,306
Rye	207,290	82,990	244,725	24,480	23,896
Flax, not reported					
Total	102,591,422	21,939,511	76,453,872	76,454,123	39,863,917

SOUTH DAKOTA.

3009

Wheat	37,200,000	20,149,684	37,728,339	42,040,923	21,441,248
Corn	27,489,000	32,418,819	30,017,416	28,109,956	23,855,688
Oats	16,934,000	12,653,266	15,332,278	16,126,578	13,647,656
Barley	2,321,178	1,543,571	2,410,354	2,484,896	2,182,600
Rye	35,885	27,804	36,765	48,439	44,996
Flax, not reported					
Total	83,980,063	66,793,144	85,525,152	88,810,792	61,172,188

Five years, Minnesota.	Total	786,545,155
Five years, North Dakota.	do	317,662,845
Five years, South Dakota.	do	386,281,339
Grand total		1,490,489,339

3010

3014 3013 3012 3011

COMPLAINANTS' EXHIBIT 6.

STATEMENT NO. 1.

Showing Receipts of Grain and Flaxseed Over All Railroads at Duluth-Superior for the Years 1897 to 1901, Inclusive.

	1897.	1898.	1899.	1900.	1901.	Total Bushels.
Wheat	48,096,238	66,413,311	54,981,948	31,815,450	47,000,965	248,280,912
Corn	2,069,296	3,342,981	7,090,210	4,186,070	4,943,583	21,632,140
Oats	6,870,381	3,962,922	3,059,208	1,401,727	1,316,224	16,610,462
Rye	1,921,376	2,197,874	1,120,586	625,303	1,031,257	6,896,396
Barley	5,407,307	3,103,000	3,372,381	2,692,172	2,925,667	17,500,527
Flaxseed	5,433,844	6,821,825	8,679,913	6,130,389	13,580,488	40,646,459
Total bushels	67,771,442	85,841,913	78,304,246	46,851,111	70,798,184	351,566,896

STATEMENT NO. 2.

Showing Shipments of Grain and Flaxseed from Duluth-Superior for the Years 1897 to 1901, Inclusive.

	1897.	1898.	1899.	1900.	1901.	Total Bushels.
Wheat	38,137,236	54,688,866	43,819,138	30,858,667	38,598,700	206,102,607
Corn	401,819	3,609,758	8,410,582	3,547,674	5,301,527	21,271,360
Oats	6,296,354	5,037,397	2,989,704	851,440	1,898,044	17,072,939
Rye	1,311,593	3,157,390	917,472	610,912	853,399	6,850,766
Barley	5,067,251	3,245,954	3,647,021	2,685,137	2,785,905	17,431,268
Flaxseed	6,460,227	6,414,706	9,397,567	6,067,035	12,677,299	41,016,834
Total bushels	57,674,480	76,154,071	69,181,484	44,620,865	62,114,874	309,745,774

Average shipments by lake for the five (5) years, 97%. Average shipments by rail for the five (5) years, 3%.
Compiled from the records of the Duluth Board of Trade, November 10, 1902. S. A. KEMP, Secretary.

STATEMENT NO. 3.

Showing all Grain and Flaxseed (in Carloads and Bushels) Received at Duluth-Superior from the Eastern Railway of Minnesota (Great Northern Line) for the Years 1897 to 1901, Inclusive.

	1897.		1898.		1899.		1900.		1901.	
	No. of Cars.	No. of Bushels.	No. of Cars.	No. of Bushels.	No. of Cars.	No. of Bushels.	No. of Cars.	No. of Bushels.	No. of Cars.	No. of Bushels.
Wheat.....	39,948	30,360,480	48,905	40,467,211	39,589	35,505,924	25,312	22,010,128	28,902	25,145,600
Corn.....	1,614	1,156,066	2,313	1,739,981	4,140	3,556,902	1,593	1,379,740	2,929	2,580,447
Oats.....	3,298	3,708,913	1,224	1,646,962	1,710	2,186,100	265	240,541	888	852,480
Rye.....	1,320	893,677	1,282	946,494	739	591,200	285	211,690	324	277,020
Barley.....	2,536	1,995,810	2,214	2,260,600	2,386	2,296,000	1,606	1,541,070	1,906	1,967,955
Flaxseed.....	4,663	3,085,112	4,668	3,727,925	6,528	5,060,400	5,154	3,036,124	8,346	5,942,340
Total.....	53,379	41,200,058	60,606	50,789,073	55,092	49,146,526	34,215	28,419,293	43,295	36,765,842

STATEMENT NO. 4.

Showing all Grain and Flaxseed (in Carloads and Bushels) Received at Duluth-Superior from the Northern Pacific Railway Company for the Years 1897 to 1901, Inclusive.

	1897.		1898.		1899.		1900.		1901.	
	No. of Cars.	No. of Bushels.	No. of Cars.	No. of Bushels.	No. of Cars.	No. of Bushels.	No. of Cars.	No. of Bushels.	No. of Cars.	No. of Bushels.
Wheat.....	18,102	13,674,497	23,907	17,157,620	17,572	15,681,624	12,710	9,437,602	25,431	21,575,030
Corn.....	3	2,149	1	800	.....	.....	177	148,680	1,207	1,061,940
Oats.....	13	14,620	11	9,960	6	7,200	599	641,341	275	261,250
Rye.....	180	121,865	262	183,400	164	131,200	224	162,890	453	386,615
Barley.....	456	358,868	549	339,200	597	466,000	546	481,070	664	378,912
Flaxseed.....	1,979	1,303,427	2,703	1,892,100	3,269	2,650,200	2,631	2,220,920	7,335	7,408,350
Total.....	20,733	15,475,426	27,433	19,583,080	21,608	18,936,224	16,887	13,092,503	35,365	31,372,097

Compiled from the records of the Duluth Board of Trade, November 10, 1902.

S. A. KEMP, Secretary.

3018 3017 3016 3015

COMPLAINANT'S EXHIBIT 6.

755

30023

STATEMENT NO. 5.

Recapitulation of Statement No. 3, Showing in Bushels all Grain and Flaxseed Received at Duluth-Superior via the Eastern Ry. of Minn. (Great Northern Line) for the Years 1897 to 1901, Inclusive.

	1897	1898	1899	1900	1901	Totals of Each Kind of Grain &c., in Bush'ls
Wheat	30,360,480	40,467,211	35,505,924	22,010,128	25,145,600	153,489,343
Corn	1,156,066	1,739,881	3,556,902	1,379,740	2,580,447	10,413,036
Oats	3,708,913	1,646,962	2,136,100	240,541	852,480	8,584,996
Rye	893,677	946,494	591,200	211,690	277,020	2,920,081
Barley	195,810	2,260,600	2,296,000	1,541,070	1,967,955	10,061,435
Flaxseed	3,085,112	3,727,925	5,060,400	3,036,124	5,942,340	21,851,901
Total	41,200,058	50,789,073	49,146,526	28,419,293	36,765,842	207,320,792

STATEMENT NO. 6.

Recapitulation of Statement No. 4, Showing in Bushels all Grain and Flaxseed Received at Duluth-Superior via the Northern Pacific Railway Company for the Years 1897 to 1901, Inclusive.

	1897	1898	1899	1900	1901	Totals of Each Kind of Grain &c., in Bush'ls
Wheat	13,674,497	17,157,620	15,681,624	9,437,602	21,575,030	77,526,373
Corn	2,149	800	.....	148,680	1,061,940	2,213,569
Oats	14,620	9,960	7,200	641 341	261,250	934,371
Rye	121,865	183,400	131,200	162,890	386,615	985,970
Barley	358,868	339,200	466,000	481,070	678,912	2,324,050
Flaxseed	1,303,427	1,892,100	2,650,200	2,220,920	7,408,350	15,474,997
Total	15,475,426	19,583,080	18,936,224	13,092,503	31,372,097	99,459,330

Compiled from the records of the Duluth Board of Trade.

S. A. KEMP, Secretary.

STATEMENT NO. 7.

Showing Receipts of all Grains and Flaxseed Received from the Eastern Ry. of Minnesota (Great Northern Line), Northern Pacific Ry. Co. and Other Railroads for the Years 1897 to 1901, Inclusive.

	Eastern Ry. of Minnesota.	Northern Pacific Ry. Co.	All Other Railroads.	Total Bushels of Each Kind of Grain, etc.
Wheat	153,489,343	77,526,373	17,265,196	248,280,912
Corn	10,413,036	2,213,569	9,005,535	21,632,140
Oats	8,584,996	934,371	7,091,095	16,610,462
Rye	2,290,081	985,970	2,990,345	2,896,396
Barley	10,061,435	2,324,050	5,115,042	17,500,527
Flaxseed	21,851,901	15,474,997	3,319,561	40,646,459
Total	207,320,792	99,459,330	44,786,774	351,566,896
	59%	28%	13%	100%

Compiled from the records of the Duluth Board of Trade.

S. A. KEMP, Secretary.

3026 3025 3024 3023

Complainant's Exhibit, will be found at end of volume.

30024

3027

[Complainant's Exhibit 8.]

TRUST INDENTURE SECURING NORTHERN PACIFIC—GREAT NORTHERN, C., B. & Q. COLLATERAL, FOUR PER CENT JOINT BONDS. JULY 1st, 1901.

AN INDENTURE, made this first day of July, A. D. 1901, by and between

Northern Pacific Railway Company, a corporation of the State of Wisconsin, hereinafter termed the "Northern Pacific Company;" and the Great Northern Railway Company, a corporation of the State of Minnesota, hereinafter termed the "Great Northern Company" (said companies together being hereinafter termed "the Railway Companies"), parties of the first part; and

3028

The Standard Trust Company of New York, a corporation organized and existing under the laws of the State of New York, hereinafter termed the "Trustee," party of the second part.

Whereas, The Northern Pacific Company operates a railroad extending from St. Paul, in the State of Minnesota, and also from a point on Lake Superior, in the State of Wisconsin, to Puget Sound on the Pacific coast, together with various branch lines and extensions; and

3029

Whereas, The Great Northern Company operates a railroad extending from St. Paul, in the State of Minnesota, and from Duluth, in the State of Minnesota, to Puget Sound on the Pacific coast, together with various branch lines and extensions; and

3030

Whereas, The Chicago, Burlington & Quincy Railroad Company, hereinafter termed the "Burlington Company," operates a railroad extending from Chicago, Illinois, to St. Paul, in the State of Minnesota, and from Chicago, Illinois, to Billings, in the State of Montana, together with various other lines, branches and extensions; and

Whereas, Said railroad of the Northern Pacific Company and said railroad of the Burlington Company are connected at

St. Paul, in the State of Minnesota, and also at Billings, in the State of Montana, and can be operated together so as to constitute one continuous main line with branches; and said railroad of the Great Northern Company and said railroad of the Burlington Company are connected at St. Paul, in the State of Minnesota, and can be operated together as one continuous main line with branches; and 3031

Whereas, The shares of the capital stock of the Burlington Company now issued or to be issued under existing contracts do not in the aggregate exceed 1,112,000 shares of the par value of $100 each; and 3032

Whereas, The Northern Pacific Company and the Great Northern Company each has corporate power to purchase the shares of the capital stock of the Burlington Company and each has corporate power to issue its obligations in payment for the shares so purchased; and

Whereas, The Northern Pacific Company and the Great Northern Company each desired to acquire an interest in the capital stock of the Burlington Company, but it was found impracticable to acquire a substantial amount of such stock except by the purchase thereof jointly, and by the issue in payment therefor of the joint bonds of the Northern Pacific Company and of the Great Northern Company, as hereinafter provided; and, therefore, said companies agreed with each other: 3033

(a) That they would purchase all, or not less than two-thirds, of the entire capital stock of the Burlington Company, on terms agreed upon between them; and that, in payment for such stock, they would issue their joint bonds, at the rate of one thousand dollars, par value, of such joint bonds for each five hundred dollars, par value, of the stock so purchased; 3034

(b) That all the stock so purchased should be assigned and transferred to the Trustee under an indenture of the tenor of these presents, as security for the payment of the principal and interest of such joint bonds;

(c) That each of the Railway Companies should pay, or should cause to be paid, one-half of the entire principal and

one-half of the entire interest of such bonds; that each should bear one-half of all other obligations imposed upon said companies by the terms of such indenture; and that if either of said Railway Companies should default in its obligations to the other in respect of such bonds, by reason of bankruptcy, insolvency or other cause disabling it from performing the same, the purchased stock belonging to such company so in default thereafter should become and be the property of the Company not in default, which thenceforth should be liable in severalty upon all covenants in the said bonds contained; and

(d) That the respective rights, interests and obligations of the Railway Companies, as between each other, in respect of all the shares of stock so acquired, and in respect of such joint bonds, should be defined in and by an agreement between said Railway Companies, subject in all respects to the prior lien and obligation of such trust indenture; and

Whereas, At a meeting of the board of directors of the Northern Pacific Company held on the 21st day of June, 1901, this indenture was submitted and read, and it was duly resolved that the same be executed and acknowledged by the president, or a vice-president, and the secretary, or an assistant secretary in behalf of said company, and that the same be delivered to The Standard Trust Company of New York, the trustee therein named; and

Whereas, At a meeting of the board of directors of the Great Northern Company held on the 29th day of June, 1901, this indenture was submitted and read, and it was duly resolved that the same be executed and acknowledged by the president or a vice-president and the secretary or an assistant secretary in behalf of said company, and that the same be delivered to The Standard Trust Company of New York, the trustee therein named; and

Whereas, The bonds to be secured by this indenture are to be coupon bonds of the denomination of one thousand dollars each, numbered consecutively from 1 upwards, and registered bonds of the denomination of one thousand dollars,

of five thousands dollars, and also of any multiple of five 3039
thousand dollars that the Railway Companies, from time to time, may prescribe, every such bond to bear a distinctive number or designation; and all such bonds, from time to time, are to be executed in the name and on behalf of each of the Railway Companies and under its corporate seal by its president or any vice-president, and by its Secretary or any assistant secretary, and are to be issued, certified and delivered as in this indenture provided, and are to be substantially of the following tenor, to-wit:

3040

[Form of Coupon Bond.]

No.—— $1,000.

UNITED STATES OF AMERICA.

NORTHER PACIFIC—GREAT NORTHERN

Four Per Cent Joint Bond.

C., B. & Q. Collateral. 3041

The Northern Pacific Railway Company, a corporation of the State of Wisconsin, hereinafter termed the Northern Pacific Company, and the Great Northern Railway Company, a corporation of the State of Minnesota, hereinafter termed the Great Northern Company, for value received, jointly promise to pay to bearer, or, if registered, to the registered holder of this bond, on the first day of July, 1921, in the city of New York, or in the city of Boston, Mass., at the office of J. P. Morgan & Co., or of such other fiscal agent or agents as shall be appointed by said Railway Companies, one thousand dollars 3042
gold coin of the United States of America of the present standard of weight and fineness, and to pay interest thereon from the first day of July, 1901, at the rate of four per cent per annum, such interest to be payable at such office in New York or in Boston in like gold coin semi-annually on the first day of January and the first day of July in each year, but only upon

3043 presentation and surrender of the annexed coupons therefor as they severally mature.

The principal and interest of this bond are payable without deduction for any tax or taxes which said Railway Companies may be required to pay or to retain therefrom under any present or future law of the United States, or of any state, county or municipality therein.

This bond is one of a duly authorized series of coupon bonds and registered bonds issued and to be issued by said Railway Companies jointly in payment of the purchase price
3044 of certain shares of the capital stock of the Chicago, Burlington & Quincy Railroad Company, of which shares one-half shall belong to the Northern Pacific Company and one-half to the Great Northern Company; all such shares having been acquired under an agreement between the Northern Pacific Company and the Great Northern Company, that if either of said Railway Companies shall default in its obligations to the other in respect of the bonds of this issue, by reason of bankruptcy, insolvency or other cause, disabling it from performing the same, the pledged shares belonging to such company so in default thereafter shall become and be
3045 the property of the company not in default, which thenceforth shall be liable in severalty upon all covenants herein contained.

All such bonds have been issued, or are to be issued, under and in pursuance of, and are to be secured ratably by and are subject to, an indenture dated July 1, 1901, duly executed by the Northern Pacific Company and by the Great Northern Company, jointly, to The Standard Trust Company of New York, as Trustee, under which indenture all such shares of stock of the Chicago, Burlington & Quincy Railroad Company so purchased by said Railway Companies shall be de-
3046 posited with said Trustee; and hereby reference is made to said indenture with the same effect as if herein fully set forth.

The aggregate amount of bonds of this issue is limited, so that never at any one time shall there be outstanding such bonds for an aggregate principal sum in excess of $222,400,000, nor in excess of twice the par value of all shares of the capital stock of the Chicago, Burlington & Quincy Railroad Com-

pany that shall have been assigned and transferred to the 3047
Trustee under said indenture in exchange for bonds certified thereunder.

This bond is subject to redemption, as stated in said indenture, on the first day of any January or July after January 1, 1906, by payment of the principal of the bond, together with a premium of five per cent thereof and the interest then accrued.

As provided in said indenture, this bond may be registered as to principal in the name of the owner on the books of the Trustee at its office in the city of New York, or on the books 3048
of an agent to be maintained in the city of Boston, Mass., such registration being noted by the registrar on the bond, and, thereafter no transfer shall be valid unless made on such books and similarly noted on the bond; but the bond may be discharged from registration by similar transfer to bearer, and from time to time it may be registered or transferred to bearer in like manner. Such registration, however, shall not affect the transferability of the coupons by delivery merely, and payment to the bearer thereof shall discharge the Railway Companies in respect of the interest therein mentioned, whether or not the bond shall have been registered. 3049

This bond also, as provided in said indenture, may be exchanged by a registered bond without coupons, bearing interest payable quarterly on each first day of January, April, July and October.

Neither this bond, nor any coupon for interest thereon, shall become or be valid until the bond shall have been authenticated by the certificate, endorsed hereon, duly signed by the Trustee under said indenture.

In witness whereof, The Northern Pacific Railway Company and the Great Northern Railway Company each has caused these presents to be signed by its president or one of its vice- 3050
presidents, and its corporate seal to be hereunto affixed and to be attested by its secretary or one of its assistant secretaries and coupons for said interest, authenticated by the engraved fac-simile signature of its treasurer, to be attached hereto, this first day of July, 1901.

3051 NORTHERN PACIFIC RAILWAY COMPANY,

[L. S.] By ——— ———,
Vice-President.

Attest:

———— ————,
Assistant Secretary.

GREAT NORTHERN RAILWAY COMPANY,

3052 [L. S.] By ——— ———,
Vice-President.

Attest:

———— ————,
Assistant Secretary.

[Form of Registered Bond Without Coupons.]

No.—— $——

UNITED STATES OF AMERICA.

3053

NORTHERN PACIFIC—GREAT NORTHERN

Registered Four Per Cent Joint Bond.

C., B. & Q. Collateral.

The Northern Pacific Railway Company, a corporation of the State of Wisconsin, hereinafter termed the Northern Pacific Company, and the Great Northern Railway Company, a corporation of the State of Minnesota, hereinafter termed the
3054 Great Northern Company, for value received, jointly promise to pay to ——— or registered assigns, on the first day of July, 1921, in the city of New York, or in the city of Boston, Mass., at the office of J. P. Morgan & Co., or of such other fiscal agent or agents as shall be appointed by said Railway Companies, ——— dollars gold coin of the United States of America of the present standard of weight and fineness, and to pay interest thereon from the first day of January, April,

July or October next preceding the date hereof, at the rate of 3055
four per cent per annum, such interest to be payable at such office in New York or in Boston in like gold coin quarterly on each first day of January, April, July and October.

The principal and interest of this bond are payable without deduction for any tax or taxes which said Railway Companies may be required to pay or to retain therefrom under any present or future law of the United States, or of any State, county or municipality therein.

This bond is one of a duly authorized series of coupon bonds and registered bonds issued and to be issued by said 3056
Railway Companies jointly in payment of the purchase price of certain shares of the capital stock of the Chicago, Burlington & Quincy Railroad Company, of which shares one-half shall belong to the Northern Pacific Company, and one-half to the Great Northern Company; all such shares having been acquired under an agreement between the Northern Pacific Company and the Great Northern Company, that if either of said Railway Companies shall default in its obligations to the other in respect of the bonds of this issue, by reason of bankruptcy, insolvency or other cause, disabling it from performing the same, the pledged shares belonging to such company 3057
so in default thereafter shall become and be the property of the company not in default, which thenceforth shall be liable in severalty upon all covenants herein contained.

All such bonds have been issued, or are to be issued, under and in pursuance of, and are to be secured ratably by and are subject to, an indenture dated July 1, 1901, duly executed by the Northern Pacific Railway Company and by the Great Northern Railway Company, jointly, to The Standard Trust Company of New York, as Trustee, under which indenture all such shares of stock of the Chicago, Burlington & Quincy Railroad Company so purchased by said Railway Companies 3058
shall be deposited with said Trustee; and hereby reference is made to said indenture with the same effect as if herein fully set forth.

The aggregate amount of bonds of this issue is limited, so that never at any one time shall there be outstanding such bonds for an aggregate principal sum in excess of $222,400,000, nor in excess of twice the par value of all shares of the capital

stock of the Chicago, Burlington & Quincy Railroad Company that shall have been assigned and transferred to the Trustee under said indenture in exchange for bonds certified thereunder.

This bond is subject to redemption, as stated in said indenture, on the first day of any January or July after January 1, 1906, by payment of the principal of the bond, together with a premium of five per cent thereof and the interest then accrued.

This bond is transferable only in the manner prescribed in said indenture on the Trustee's books provided for that purpose at its office in the city of New York, or on the books of an agent to be maintained in the city of Boston, Mass., upon surrender and cancellation of this bond; and thereupon a new registered bond will be issued to the transferee in exchange therefor on payment of the charge provided for in said indenture. This bond also, in the manner prescribed in said indenture, and upon payment of the charge therein provided, is exchangeable for coupon bonds of the same aggregate principal sum.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said indenture.

In witness whereof, the Northern Pacific Railway Company and the Great Northern Railway Company each has caused these presents to be signed by its president or one of its vice-presidents, and its corporate seal to be hereunto affixed and to be attested by its secretary, or one of its assistant secretaries, the ———

NORTHERN PACIFIC RAILWAY COMPANY,

[L. S.] By ——— ———,
Vice-President.

Attest:

———— ————,
Assistant Secretary.

GREAT NORTHERN RAILWAY COMPANY, 3063

[L. S.] By ——— ———,
Vice-President.

Attest.

———— ————,
Assistant Secretary.

And whereas, There are to be attached to said coupon bonds at the time of the issue thereof coupons representing the semi-annual installments of interest which shall become 3064
due thereon, each of which coupons is to be substantially of the following tenor, viz.:

[Form of Interest Coupon.]

$20. No.——

On the first day of ——— the Northern Pacific Railway Company and the Great Northern Railway Company, jointly promise to pay to bearer, in the city of New York, or in the city of Boston, Mass., at the office of J. P. Morgan & Co., or of 3065
such other fiscal agent or agents as said Railway Companies may appoint, twenty dollars gold coin, without any deduction for taxes, being six months' interest, then due on their Four per cent joint bond No. ——, subject to the terms of said bond and of the indenture therein mentioned.

———— ————,
Treasurer.

———— ————,
Treasurer. 3066

And whereas, Each of the coupons to be attached to such coupon bonds is to be authenticated by the engraved facsimile signature of the present treasurer or of any future treasurer of the Northern Pacific Company and of the present treasurer or of any future treasurer of the Great Northern Company, and each of said companies may adopt and use for

3067 that purpose the engraved fac-simile signature of any person who shall have been its treasurer, notwithstanding the fact that he may have ceased to be such treasurer at the time when such bonds shall be actually certified and delivered, and such coupons shall be attached to the bonds; and

Whereas, On each of said coupon bonds and on each of said registered bonds without coupons there is to be endorsed a certificate of the Trustee under this indenture that it is one of the bonds issued hereunder; and no bond shall be secured by this indenture or be obligatory for any purpose unless such
3068 certificate shall have been executed by such Trustee, such certificate to be substantially of the following tenor, viz.:

[Form of Trustee's Certificate.]

This bond is one of the series of bonds described in the within-mentioned indenture executed by the Northern Pacific Railway Company and the Great Northern Railway Company to the undersigned as Trustee.

THE STANDARD TRUST COMPANY OF NEW YORK,
3069 Trustee.

By ——— ———.

Now, therefore, this indenture witnesseth:

That, in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this indenture, and the performance of all the covenants and conditions herein contained, and in consideration of the premises and of the purchase and acceptance of such bonds by the holders thereof, and of the sum of one dollar to each of
3070 them duly paid by the Trustee at the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged,

The Railway Companies, parties of the first part, have assigned and transferred, and by these presents do assign and transfer unto the Trustee, party of the second part, its successors and assigns, one million and sixty-six thousand and six hundred (1,066,600) shares of the capital stock of the Chi-

cago, Burlington & Quincy Railroad Company, the certificates 3071
for which have been delivered to the Trustee, and all additional shares of the capital stock of said company in exchange for which bonds hereby secured shall be certified and delivered hereunder.

To have and to hold the said shares of capital stock, and all additional property that hereafter shall become subject to this indenture unto the Trustee and its successors and assigns, in trust for the equal and proportionate security of all present and future holders of bonds and interest obligations 3072
issued, and to be issued, under and secured by this indenture, and for the enforcement of the payment of said bonds and interest obligations when payable, and the performance of and compliance with the covenants and conditions of this indenture, without preference, priority or distinction as to lien or otherwise of any one bond over any other bond by reason of priority in the issue or negotiation thereof; so that each and every bond issued and to be issued, as aforesaid, shall have the same right, lien and privilege under this indenture and so that the principal and interest of every such bond shall, subject to the terms hereof, be equally and proportion- 3073
ately secured hereby as if all had been made, executed, delivered and negotiated simultaneously with the execution and delivery of this indenture, it being intended that the lien and security of this trust deed shall take effect from the day of the execution hereof without regard to the day of actual issue, sale or disposition of said bonds as though upon such day all of said bonds were actually issued, sold and delivered to the purchasers for value.

And hereby it is covenanted and declared that all such bonds with the coupons for interest thereon are to be issued, 3074
certified and delivered and that said stock is to be held by the Trustee subject to the further covenants, conditions, uses and trusts hereinafter set forth; and it is covenanted between the parties hereto as follows, viz.:

3075

ARTICLE ONE.

Section 1. From time to time the bonds to be secured hereby shall be executed by the Railway Companies and by them shall be delivered for certification, to the Trustee; and thereupon as provided in this article, and not otherwise, the Trustee shall certify and shall deliver the same. At the option of the Railway Companies, from time to time, any of such bonds may be executed, certified and delivered originally either as coupon bonds or as registered bonds.

3076 The amount of bonds hereby secured which may be executed by the Railway Companies and which may be certified by the Trustee is limited so that never at any time shall there be outstanding bonds hereby secured for an aggregate principal sum exceeding $222,400,000, nor in excess of twice the par value of all shares of the capital stock of the Burlington Company that shall have been assigned and transferred to the Trustee under this indenture in exchange for bonds certified and delivered hereunder.

Before certifying or delivering any coupon bond hereby secured the Trustee shall detach and shall cancel all coupons
3077 thereof then matured; and every registered bond shall be dated on the day of the actual certification thereof.

Only such of said bonds as shall bear thereon a certificate substantially in the form hereinbefore recited, duly executed by the Trustee, shall be secured by this indenture or shall be entitled to any lien or benefit hereunder. Every such certificate of the Trustee upon any bond executed by the Railway Companies shall be the conclusive and the only evidence that the bond so certified was duly issued hereunder, and is entitled to the benefit of the trust hereby created.

3078 Sec. 2. Upon the execution of this indenture and upon delivery to the Trustee of the certificates for said 1,066,600 shares of the capital stock of the Burlington Company, accompanied by duly executed instruments of assignment and transfer thereof, the Trustee, without any further action on the part of the Railway Companies, shall certify and shall deliver to the Metropolitan Trust Company of the city of New York, or to its agent, the Old Colony Trust Company (of Boston,

Mass.), as may be ordered in writing by Francis W. Hunnewell, Charles J. Paine and J. Malcolm Forbes, or any two of them, bonds hereby secured for the aggregate principal sum of $213,320,000. 3079

Sec. 3. The remaining $9,080,000, par value, of bonds authorized to be issued under and secured by this indenture shall be reserved to be executed, certified and delivered as follows and not otherwise:

Whenever, after delivery to the Trustee of the certificates for said 1,066,600 shares of the capital stock of the Burlington Company under section 2 of this article, the Railway Companies shall tender or shall cause to be tendered to the Trustee the certificates, accompanied by duly executed instruments of assignment and transfer, for any of the remaining shares of the capital stock of the Burlington Company issued and outstanding at the date hereof, or for any shares of said company which under existing obligations it is to issue and deliver (the aggregate par value of all such shares already issued and to be issued under existing obligations being not more than $111,200,000) the Trustee shall receive the same and in exchange therefor shall certify and shall deliver, upon the order in writing of the president or a vice-president of the Northern Pacific Company and of the president or a vice-president of the Great Northern Company, $1,000 par value of the bonds reserved under this section for each $500 par value of such shares of the Burlington Company so received by the Trustee under this section. 3080 3081

The Trustee may receive a certificate signed by the president or a vice-president of the Northern Pacific Company or of the Great Northern Company as sufficient evidence that any certificates for shares of the capital stock of the Burlington company tendered to the Trustee hereunder are such certificates for shares of the capital stock of the Burlington Company in exchange for which bonds may be certified and delivered by the Trustee hereunder. 3082

Sec. 4. Whenever any coupon bond or bonds, issued under and secured by this indenture, together with all unmatured coupons thereto belonging, shall be surrendered for exchange

3083 for registered bonds without coupons, the Railway Companies shall execute, and the Trustee shall certify, and in exchange for such coupon bond or bonds shall deliver, a registered bond or registered bonds, without coupons, for the like aggregate principal sum. If such exchange shall be made more than three months after the date of maturity of the last matured coupon of such surrendered coupon bonds the Railway Companies at the time of such exchange in adjustment of the interest on such bonds shall pay a sum equal to one quarterly installment of interest on such registered bond or bonds without coupons.

3084 Whenever any registered bond without coupons issued under and secured by this indenture shall be surrendered for exchange for a coupon bond or bonds, the Railway Companies, upon payment of the charges therefor, shall issue and the Trustee shall certify and in exchange for such registered bond shall deliver a coupon bond or coupon bonds for the like aggregate principal sum, with the coupons maturing on and after the first day of January or the first day of July next after the date of such exchange; but if such exchange shall be made less than three months prior to any first day of January 3085 or first day of July, the holder of such surrendered registered bond at the time of such exchange, in adjustment of the interest on such bonds, shall pay to the Trustee to the credit of the Railway Companies a sum equal to the quarterly installment which shall have matured on such registered bond in respect of the interest represented by the coupon next maturing upon such coupon bond or bonds.

In every case of such exchange the Trustee forthwith shall cancel the surrendered bond or bonds and coupons and shall deliver the same to the Railway Companies.

3086 Whenever any registered bond or bonds without coupons shall be surrendered, transferred and canceled, the Railway Companies upon request therefor shall issue to the transferee, and the Trustee shall certify and shall deliver registered bonds, or one registered bond, without coupons, for a like aggregate principal sum.

Nevertheless, no coupon bond shall be exchangeable for a registered bond without coupons after such coupon bond shall have been drawn for redemption or after notice of re-

demption thereof shall have been advertised as provided in article four hereof; and no registered bond without coupons shall be transferable, or shall be exchangeable for a coupon bond after such registered bond without coupons shall have been drawn for redemption or after notice of redemption thereof shall have been advertised as provided in said article. 3087

Except as hereinafter provided in section 6 of this article, the Railway Companies, for any exchange of coupon bonds for registered bonds, and (2) for any transfer of registered bonds without coupons, and (3) for any exchange of registered bonds without coupons for coupon bonds, at their option, may require the payment of a sum sufficient to reimburse them for any stamp tax or governmental charge, and in addition thereto such further sum as may be necessary to meet other expense connected therewith, such further sum, however, not to exceed one dollar for each new coupon bond or registered bond without coupons issued upon such exchange or transfer. 3088

Sec. 5. In case any coupon bond issued hereunder with the coupons thereto appertaining, or any registered bond without coupons shall become mutilated or be destroyed, the Railway Companies, in their discretion, may execute, and thereupon the Trustee shall certify and deliver, a new bond of like tenor and date (including coupons in case of a coupon bond) bearing the same serial number, in exchange and substitution for, and upon cancellation of, the mutilated coupon bond and its coupons, or the mutilated registered bond, or in lieu of and substitution for the coupon bond and its coupons or the registered bond so destroyed, upon receipt of evidence satisfactory to the Railway Companies and to the Trustee of the destruction of such coupon bond and its coupons, or of such registered bond, and upon receipt also of indemnity satisfactory to the Railway Companies and to the Trustee. 3089 3090

Sec. 6. Until the bonds to be issued under and secured by this indenture can be engraved, the Railway Companies may execute, and upon their request the Trustee shall certify and deliver, pursuant to sections 2 and 3 of this article, in lieu of such engraved bonds, printed registered bonds

of any denomination, substantially of the tenor of the registered bonds to be issued as hereinbefore provided. Upon surrender of such printed bonds for exchange, the Railway Companies at their own expense and without making any change therefor, shall issue, and upon cancellation of such surrendered bonds the Trustee shall certify and deliver, in exchange therefor, engraved coupon bonds or registered bonds without coupons of any denomination or denominations hereinbefore provided for the same aggregate principal sum as the printed bonds surrendered; and until so exchanged each of such printed bonds shall be entitled to the same security as an engraved bond issued hereunder.

Sec. 7. Nothing in this article contained, or in any other article of this indenture, or in the bonds issued hereunder, expressed or implied, is intended, or shall be construed, to give to any stockholder of the Burlington Company or to any other person or corporation, except the parties hereto and the holders of bonds issued under and secured by this indenture, any legal or equitable right, remedy or claim under or in respect of this indenture, or under any covenant, condition or provision herein contained; all its covenants, conditions and provisions being intended to be, and being, for the sole and exclusive benefit of the parties hereto, and of the holders of the bonds hereby secured.

ARTICLE TWO.

Section 1. The Railway Companies covenant that duly and punctually they will pay the principal and interest of every bond issued and secured hereunder at the dates and the place, and in the manner mentioned in such bonds, or in the coupons thereto belonging, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes imposed by the United States, or any state or county or municipality thereof, which the Railway Companies may be required to pay or to retain therefrom, under or by reason of any present or future law. The interest on the coupon bonds shall be payable only upon presentation and surrender of the several coupons for such interest as they

respectively mature, and when paid such coupons shall forth- 3095
with be canceled.

The interest on the registered bonds without coupons shall be payable only to the registered holders thereof, and the Railway Companies shall cause cheques for such interest to be remitted by mail to all holders of registered bonds without coupons, who shall file suitable written orders therefor with the fiscal agent of the Railway Companies in New York or in Boston at whose office such interest is payable.

The principal and interest of such bonds shall be payable in the city of New York or in the city of Boston, Mass., at 3096
the office of J. P. Morgan & Co., or of such other fiscal agent or agents as shall be appointed by the Railway Companies for that purpose. At all times, until the payment of the principal of the bonds hereby secured, the Railway Companies will maintain a fiscal agency in the city of New York and in the city of Boston where bonds and coupons may be presented for payment and where notices or demands in respect of said bonds and coupons may be served, and, from time to time, the Railway Companies will give written notice to the Trustee of any change of any such agency. In case the Railway Companies should fail to maintain such agency or should 3097
fail to give such notice of any change thereof, presentation and demand may be made and notices may be served at the office of the Trustee in the city of New York.

Sec. 2. The Railway Companies hereby appoint the Trustee registrar in the city of New York, and at all times they will maintain an agency in the city of Boston for the registration and transfer of bonds issued hereunder. At each of such places of registration the Railway Companies will cause to be registered, subject to reasonable regulations, in books to be kept for that purpose, any bonds without coupons, and, upon 3098
presentation thereof for such purpose, any coupon bonds issued hereunder; and the Railway Companies by instrument in writing from time to time may appoint a new registrar in the city of New York or in the city of Boston in place of any registrar previously appointed.

Upon presentation at the office of either bond registrar at its office in the city of New York or in the city of Boston of

3099 any such coupon bond registered at the same office, accompanied by delivery of a written instrument of transfer executed by the registered holder, such bond shall be transferred upon such bond register and such transfer shall be noted by such registrar upon the bond. The registered holder of any such registered coupon bond also shall have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such bond when due shall be payable to the person presenting the bond; but any such coupon bond regis-
3100 tered as payable to bearer may be registered again in the name of the holder with the same effect as a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired; and each registration of a coupon bond shall be noted by the bond registrar on the bond.

Registration of any coupon bond, however, shall not restrain the negotiability of any coupon thereto belonging, but every such coupon shall continue to pass by delivery merely, and shall remain payable to bearer.

Any registered bond or bonds without coupons may be
3101 transferred upon such register by surrender of such bond or bonds for cancellation accompanied by delivery of a written instrument of transfer duly executed by the registered holder of the bond or bonds; and thereupon a new registered bond, or new registered bonds, for an equivalent principal sum shall be issued to the transferee or transferees as provided in section 4 of article one hereof.

Sec. 3. The Railway Companies covenant

(a) that in case hereafter there shall be issued any shares of the capital stock of the Burlington Company, in addition to
3102 the shares that now are outstanding or that may be issued in exchange for the convertible debentures of said company now outstanding, or that may be issued to the holders (other than the Burlington Company) of the shares of other corporations whose franchises and property have been purchased by the Burlington Company or that may be issued to any other party or parties now entitled to demand stock of the Burlington Company, then the Railway Companies will assign and

transfer, or will cause to be assigned and transferred, to the 3103
Trustee, by it to be held subject to the trusts of this indenture, such part of such additional capital stock as shall bear a like proportion to the part of the entire capital stock of the Burlington Company previously assigned and transferred to the Trustee hereunder;

(b) that they will not by affirmative vote or by abstaining from voting sanction or permit the issue of any bonds by the Burlington Company, except for the refunding of its existing obligations, or for the acquisition of additional properties, or for betterments or improvements, or for other lawful purposes 3104
of the Burlington Company;

(c) that no proceeds of any bonds that may be issued by the Burlington Company (except such proceeds to an amount not exceeding any undivided surplus that shall have been accumulated by the Burlington Company after July 1, 1901), shall be used to pay any part of the bonds secured by this indenture unless all the bonds hereby secured shall then be paid;

(d) that no part of the surplus of the Burlington Company existing on July 1, 1901, in which surplus are included the shares of other corporations now in the treasury of the Bur- 3105
lington Company whose franchises and property have been purchased by the Burlington Company as also any shares of said Burlington Company that might be issued in exchange for such shares of such other corporations, shall be distributed as a dividend among the stockholders unless all the bonds secured by this indenture shall then be paid;

(e) that they will cause all repairs, renewals and replacements, necessary to maintain the railroads, structures, locomotives, cars and other equipment, tools and other property of the Burlington Company in their present good order and condition, to be made out of the earnings of said railroads and 3106
other property, and will consent and do hereby consent that the said railroads and other property and the books of account of the Burlington Company may be from time to time inspected personally by any member of the present executive and finance committee of the Burlington Company with any necessary clerical assistance, and such members, upon their

request, shall be furnished with free transportation over all the lines of the Burlington system;

(f) that the following provision in the bonds secured by this indenture to-wit:

> "all such shares having been acquired under an agreement between the Northern Pacific Company and the Great Northern Company, that if either of said Railway Companies shall default in its obligations to the other in respect of the bonds of this issue, by reason of bankruptcy, insolvency, or other cause, disabling it from performing the same, the pledged shares belonging to such company so in default thereafter shall become and be the property of the company not in default, which thenceforth shall be liable in severalty upon all covenants herein contained"

may be enforced against either or both of said Railway Companies by the Trustee in the interest and for the benefit of bondholders by any such action and by any such legal proceedings as may be deemed necessary and appropriate;

(g) that neither of said Railway Companies will additionally encumber its existing lines of railway by any new mortgage thereon, except by way of further security for bonds issued under existing mortgages of said railways, or to secure bonds issued to refund bonds secured by existing mortgage of said railways, unless, by the terms of such new mortgage, it shall be provided, that any balance that the mortgagor shall be bound to pay on account of the bonds secured by this indenture after the application of the stock pledged hereunder. shall be included in the debt secured by said new mortgage;

(h) that they will not sanction or permit the execution by the Burlington Company of any lease of the railways in its system unless such lease be made subject to termination by the Burlington Company in case the shares of the capital stock of the Burlington Company held by the Trustee hereunder shall be sold because of any default by the Railway Companies hereunder, or shall be retaken by the holders of the bonds hereby secured in exchange for their bonds pursuant to section 5 of article five hereof; and

(i) that they will not sanction or permit the sale by the 3111
Burlington Company of the railways in its system or of any essential part thereof, or of the securities representing the same, unless provision be made that so much of the consideration for such sale as is or may be receivable by the holders of the shares of the capital stock of the Burlington Company pledged hereunder, upon the *pro rata* distribution thereof among all the stockholders of the Burlington Company, shall be delivered to the Trustee hereunder by it to be held as further security for the bonds hereby secured.

3112

ARTICLE THREE.

Section 1. The Trustee shall cause to be transferred into its name as Trustee under this indenture all shares of the capital stock of the Burlington Company the certificates for which shall be delivered to the Trustee hereunder.

Sec. 2. Until and unless there shall be some default in the payment upon demand of the interest or of some part of the interest on any bond hereby secured and such default shall have continued for a period of three months, or in the pay- 3113
ment of the principal or of some part of the principal of any bond hereby secured, (1) the Trustee, from time to time upon the written demand of the Railway Companies, authorized by resolution of the board of directors of each of the Railway Companies, shall execute and deliver its powers of attorney appointing such person or persons as the Railway Companies from time to time jointly shall so designate in writing as attorney and proxy to vote at meetings of the stockholders of the Burlington Company upon all said shares of stock for the election of directors and for all purposes not in violation of the provisions of section 3 of article two hereof; and (2) 3114
in case the Railway Companies shall fail jointly so to designate in writing such person or persons the Trustee by one of its officers or by an attorney or proxy by it selected, shall vote upon all such stock at elections of directors of the Burlington Company for the election of five persons to be nominated in writing by the Northern Pacific Company, for the election of five persons to be nominated in writing by the

Great Northern Company, and for the election of an eleventh person so to be nominated in writing by both of said Railway Companies; but if the Railway Companies shall not, at least five days prior to the date of such election, jointly so nominate a person to be such eleventh director, then the Trustee shall vote upon all such stock for the election of such person as eleventh director as shall be nominated in writing by the firm of J. P. Morgan & Co., who shall act as umpire for that purpose. Upon all questions other than the election of directors, if the Railway Companies shall have failed to designate an attorney or proxy, the Trustee shall vote upon such stock in accordance with any written directions that may so be given to it by both of said Railway Companies, or, in the absence of written direction so given by both of said Railway Companies, then in accordance with any written directions that may be so given by either one of the Railway Companies and by said firm of J. P. Morgan & Co., who shall act as umpire for that purpose. By written agreement, of which a copy (authenticated by resolution of the board of directors of each of the Railway Companies) shall be delivered to the Trustee, the Railway Companies may appoint any other person or persons to act as umpire in place of J. P. Morgan & Co. under the foregoing provisions; and also may make any provision in lieu of the foregoing provisions in respect of the voting upon any of the stock pledged hereunder, until and unless there shall be some default in the payment upon demand of the interest, or of some part of the interest, on any bond hereby secured, and such default shall have continued for a period of three months, or in the payment of the principal, or of some part of the principal, of any bond hereby secured—notice of any such substituted provision to be given to the Trustee; but in no event shall any vote be cast upon any of said shares in violation of the provisions of section 3 of article two hereof.

Sec. 3. Until and unless there shall be some default in the payment upon demand of the interest or principal, or of some part of the interest or principal of any bond hereby secured, each of the Railway Companies and its assigns shall be entitled to receive and to collect the dividends on one-half of

the stock held by the Trustee hereunder, and the Trustee, 3119
upon demand of either of the Railway Companies, from time to time, shall execute and deliver such assignments, orders or other instruments as may be required to enable each of the Railway Companies and its assigns to collect and receive one-half of all dividends that may be declared or may become payable upon all of such stock held by the Trustee hereunder, and the Trustee shall pay over to each of the Railway Companies and its assigns one-half of all sums that may be received or collected by the Trustee as dividends upon such stock. 3120

ARTICLE FOUR.

From time to time, upon previous advertisement of notice of call, as hereinafter provided, the Railway Companies shall have the right on the first day of any January or July after January, 1906, to redeem and to pay off the bonds hereby secured at 105 per cent of their par value and the interest accrued to the date of redemption specified in such notice; but not less than $1,000,000, par value, of such bonds shall be called for redemption at any one time, and no registered 3121
bonds without coupons issued and outstanding under this indenture shall be called for redemption until after all coupon bonds then outstanding shall have been called for redemption. If at any time the Railway Companies sha'' desire to redeem less than all of the outstanding coupon bonds or less than all of the outstanding registered bonds without coupons, they shall request the Trustee to draw by lot bonds for a specified aggregate principal sum, and thereupon the Trustee shall draw by lot the distinctive numbers of the coupon bonds or of the registered bonds without coupons for such aggregate 3122
principal sum. Before any such bonds shall become redeemable, the Railway Companies in each case shall advertise at least once in each calendar month for three successive calendar months in two newspapers published in the city of New York and in two newspapers published in the city of Boston a notice addressed to the holders of bonds secured by this indenture, stating that the Railway Companies have called for redemption bonds specified in such notice, and that upon a

3123 date therein designated (which date shall be on the first day of January or July next after such notice shall have been advertised for the period aforesaid) there will become and be due and payable upon each of the bonds specified in such notice the principal thereof with a premium of five per cent of such principal, and the accrued interest to the date of redemption so designated. If less than all the outstanding coupon bonds, or less than all the outstanding registered bonds without coupons shall be called for redemption, the distinctive numbers of the bonds drawn by the Trustee for re-
3124 demption shall be specified in such notice, but if all the bonds of either class shall be called, it shall be sufficient to indicate that fact in the notice.

Upon such advertisement of such notice the bonds therein specified shall become and be due and payable in the city of New York, or in the city of Boston, Mass., on the date designated in such notice at the office of J. P. Morgan & Co., or of such other fiscal agent or agents as shall be appointed by the Railway Companies, at par, with a premium of five per cent of their par value and the interest accrued from the last matured interest installment. The sum payable for principal
3125 and premium of each coupon bond shall be payable to the bearer of such coupon bond unless it shall have been registered, and if it shall be registered then to the registered holder of such coupon bond, but in no case, except upon surrender of such bond and of all coupons for interest thereon not due at the date of redemption designated in such notice. All interest installments upon coupon bonds which shall have matured on or prior to the date of redemption designated in such notice shall continue to be payable to the bearers severally and respectively of the coupons for such installments. The sums so due upon the registered bonds without coupons
3126 for principal, premium and for such accrued interest from the maturity of the last interest installment prior to such date of redemption shall be paid to the registered holders of such bonds, but only upon surrender thereof.

All bonds that shall be redeemed and paid hereunder shall be canceled and no new bond shall be issued in substitution therefor.

From and after the date of redemption designated in any notice so advertised (unless the Railway Companies shall make default in paying the same upon demand as herein provided), no further interest shall accrue upon any of the bonds so called for redemption; and anything in such bonds or in such coupons or in this indenture to the contrary notwithstanding, any coupons for interest maturing after such date shall become and be null and void. 3127

ARTICLE FIVE.

Section 1. Neither any coupon belonging to any bond hereby secured, nor any claim for interest on any registered bond, which in any way, at or after maturity, shall have been transferred or pledged separate and apart from the bond to which it relates, shall, unless accompanied by such bond, be entitled, in case of a default hereunder, to any benefit of, or from, this indenture, except after the prior payment in full of the principal of the bonds issued hereunder, and of all coupons and interest obligations, not so transferred or pledged. 3128

Sec. 2. In case (1) default shall be made in the payment upon demand of any interest on any bond secured by this indenture, and such default shall continue for a period of three months; or, in case (2) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Companies, and any such last-mentioned default shall continue for a period of six months after written notice thereof shall have been given to the Railway Companies by the Trustee, then, during the continuance of any such default, upon the written request of the holders of a majority in amount of the bonds hereby secured then outstanding, the Trustee, by notice in writing delivered to the Railway Companies, shall declare the principal of the bonds hereby secured and then outstanding to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of 3129 3130

3131 said bonds shall have been so declared due and payable, all arrears of interest upon all such bonds, with interest at the rate of four per cent per annum on overdue installments of interest, shall either be paid by the Railway Companies or be collected out of the pledged stock, or be paid before any sale of the pledged stock shall have been made, or if any default in the observance or performance of any covenant or condition of this indenture not relating to the payment of interest on any bond shall be cured or satisfaction deemed by the Trustee to be adequate shall be made therefor, then and in every
3132 such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Railway Companies and to the Trustee, may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this indenture, by foreclosure, or otherwise, and such proceeding shall have been discontinued or abandoned because of such waiver, or for any other reason, or shall have been determined adversely to the Trustee, then and in every
3133 such case, the Railway Companies and the Trustee shall be restored to their former position and rights hereunder in respect of the shares of stock pledged hereunder, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

Sec. 3. In case (1) default shall be made in the payment upon demand of any interest on any bond hereby secured, or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in
3134 case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Companies and any such last-mentioned default shall continue for a period of six months after written notice thereof shall have been given to the Railway Companies by the Trustee—then and in every such case, during the continuance of such default, the Trustee may revoke all assignments, orders or other instruments by it executed enabling the Railway Companies to collect and

to receive dividends on such stock of the Burlington Company held hereunder, and the Trustee for the benefit of the holders of the bonds hereby secured shall be entitled to receive and to collect all dividends that shall become payable upon said stock. 3135

All sums so received or collected by the Trustee as dividends upon such stock, after deducting therefrom all proper charges, costs and expenses payable to the Trustee by the Railway Companies hereunder, shall by the Trustee be applied as follows:

In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default, in the order of the maturity of the installments of such interest, with interest thereon at the rate of four per cent per annum; such payments to be made ratably to the persons entitled thereto, without discrimination or preference. 3136

In case the principal of the bonds hereby secured shall have become due, by declaration or otherwise, first to the payment of the accrued interest (with interest on the overdue installments thereof at the rate of four per cent per annum) in the order of the maturity of the installments, and next to the payment of the principal of all bonds hereby secured; in every instance such payment to be made ratably to the persons entitled to such payment without any discrimination or preference. 3137

These provisions, however, are not intended in anywise to modify the provisions of section 1 of this article five, but are subject thereto.

Sec. 4. In case (1) default shall be made in the payment upon demand of any interest on any bond hereby secured, and such default shall continue for a period of three months; or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Companies and any such last-mentioned default, shall continue for a period of six months after written notice thereof shall have been given to the Rail- 3138

3139 way Companies by the Trustee—then and in every such case during the continuance of such default the Trustee may vote upon all such shares of stock and may revoke any powers of attorney or proxies which it may have executed at the request of the Railway Companies.

Sec. 5. In case (1) default shall be made in the payment upon demand of any interest on any bond hereby secured, and any such default shall continue for a period of six months, or in case (2) default shall be made in the due and punctual payment of the principal of any bond hereby secured, or in case
3140 (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Companies, and any such last-mentioned default shall continue for a period of six months after written notice thereof shall have been given to the Railway Companies by the Trustee, then, and in each and every such case of default, the Trustee, in its discretion, either

(a) may sell or cause to be sold to the highest and best bidder in one lot and as an entirety all and singular the shares of the capital stock of the Burlington Company then
3141 held by the Trustee hereunder, which sale shall be made at public auction at such place in the city of New York, and at such date, and at such time, and upon such terms as the Trustee may determine, and as shall be specified in a notice of such sale, which shall be published in a newspaper in the city of New York and also in a newspaper in the city of Boston, Mass., at least twice in each calendar week for four successive calendar weeks prior to the date of such sale; or

(b) may proceed to protect and to enforce its rights and the rights of the bondholders under this indenture by a suit or suits in equity or at law, whether for the specific performance
3142 of any covenant or agreement contained herein or in aid of the execution of any power herein granted, or for the foreclosure of this indenture, or for the enforcement of any other appropriate legal or equitable remedy as the Trustee, being advised by counsel learned in the law shall deem most effectual to protect and enforce any of its rights hereunder.

Nevertheless, if thereunto requested by the holders of three-fourths in amount of the bonds hereby secured then out-

standing, the Trustee, in lieu of selling such stock or of enforc- 3143
ing any of its rights or remedies hereunder by reason of such default, shall cause to be transferred to the respective holders of such bonds, in exchange for such bonds, with all unmatured coupons for interest thereon and upon surrender thereof to the Trustee for cancellation, $500 par value of such stock of the Burlington Company for each $1,000 par value of the bonds so surrendered in exchange. Such written request executed during the continuance of any such default by the holders of three-fourths in amount of the bonds hereby secured at the time outstanding shall bind all the holders of 3144
bonds and coupons hereby secured, whether or not such holders shall have executed any such written request, and after the delivery to the Trustee of such written request, executed by the holders of three-fourths in amount of the bonds hereby secured, no holder of any such bond or of any coupon not then matured shall have any right or claim by reason of such bond or coupon, except to receive in exchange for and upon cancellation of each bond with its unmatured coupons $500, par value, of said shares of capital stock of the Burlington Company for each $1,000, par value, of the bonds so surrendered. All the bonds and coupons so surrendered shall by the Trus- 3145
tee be canceled and be delivered to the Railway Companies.

Sec. 6. Upon the written request of the holders of twenty-five per cent in amount of the bonds hereby secured, in case of any such continuing default, it shall be the duty of the Trustee, upon being indemnified, as hereinafter provided, to take all steps needful for the protection and enforcement of its rights and the rights of the holders of the bonds hereby secured, and to exercise the powers herein conferred, or to take appropriate judicial proceedings by action, suit or otherwise, as the Trustee, being advised by counsel learned in the 3146
law, shall deem most expedient in the interest of the holders of the bonds hereby secured; but, anything in this indenture to the contrary notwithstanding, the holders of seventy-five per cent in amount of the bonds hereby secured and then outstanding, from time to time, shall have the right to direct and control the action of the Trustee and the method and place of conducting any and all proceedings for any sale of the pledged

3147 stock, or for the foreclosure of this indenture, or for the appointment of a receiver or of any other proceedings hereunder.

Sec. 7. From time to time the Trustee may adjourn any sale to be made by it under the provisions of this indenture, by announcement at the time and place appointed for such sale, or for such adjourned sale or sales; and without further notice or publication, it may make such sale at the time and place to which the same shall be so adjourned.

3148 Sec. 8. Upon the completion of any such sale under this indenture the Trustee shall transfer to the accepted purchaser all such shares of the capital stock of the Burlington Company and shall deliver to such purchaser the certificates therefor, and the Trustee hereby is appointed the true and lawful attorney irrevocable of the Railway Companies and of each of them in their name and stead to make all necessary assignments and transfers of the shares of capital stock thus sold, and may substitute any one or more persons with like power, the Railway Companies hereby ratifying and confirming all that their said attorneys or such substitute or substitutes
3149 shall lawfully do by virtue hereof.

Any such sale made under or by virtue of this indenture, whether under the power of sale hereby granted and conferred or under or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Railway Companies, and of each of them, of, in and to the shares of capital stock sold, and shall be a perpetual bar, both at law and in equity, against the Railway Companies and each of them, and their successors and assigns, and against any and all persons claim-
3150 ing or to claim the shares of the capital stock sold, or any part thereof, from, through or under the Railway Companies or either of them, or their successors or assigns.

Sec. 9. The receipt of the Trustee shall be a sufficient discharge to any purchaser of the property or any part thereof, sold as aforesaid, for the purchase money; and no such purchaser or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt shall be

bound to see to the application of such purchase money upon 3151
or for any trust or purpose of this indenture, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

Sec. 10. In case of such sale, whether made under the power of sale hereby granted or pursuant to judicial proceedings, the whole of the principal sums of the bonds hereby secured, if not previously due, shall at once become due and 3152
payable, anything in said bonds or in this indenture to the contrary notwithstanding.

Sec. 11. The purchase money, proceeds or avails of any such sale, whether under the power of sale hereby granted or pursuant to judicial proceedings, together with any other sums which then may be held by the Trustee under any of the provisions of this indenture as part of the trust estate or the proceeds thereof, shall be applied as follows:

First. To the payment of the costs and expenses of 3153
such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the Trustee hereunder and of all charges upon said shares of stock superior to the lien of these presents.

Second. To the payment of the whole amount then owing or unpaid upon the bonds hereby secured for principal and interest, with interest at the rate of four per cent per annum on the overdue installments of interest; and in case such proceeds shall be insufficient to pay in
full the whole amount so due and unpaid upon the said 3154
bonds, then ratably to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, subject, however, to the provisions of section 1 of this article;

3155 **Third. One-half of any surplus remaining shall be paid over to each of the Railway Companies, its successors or assigns, or to whosoever may be lawfully entitled to receive the same.**

Sec. 12. Upon any such sale by the Trustee or pursuant to judicial proceedings, any purchaser, for or in settlement or payment of the purchase price of the property purchased, shall be entitled to use and apply any bonds, and any matured and unpaid coupons hereby secured, by presenting such bonds
3156 and coupons in order that there may be credited thereon the sums applicable to the payment thereof out of the net proceeds of such sale after making any deductions which may be made from the proceeds of sale for costs, expenses, compensations and other charges; and such purchaser thereupon shall be credited, on account of such purchase price payable by him, with the sums applicable out of such net proceeds to the payment of, and credited on, the bonds and coupons so presented; and, at any such sale, any bondholders may bid for, and purchase, such property, and may make payment therefor as aforesaid, and, upon compliance with the terms of sale, may
3157 hold, retain and dispose of such property without further accountability.

Sec. 13. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this indenture, or for the execution of any trust thereof, or for the appointment of a receiver, or for any other remedy hereunder, unless the holders of twenty-five per cent in amount of the bonds hereby secured, then outstanding, shall have made written request upon the Trustee to take action in respect of the matter complained
3158 of and shall have afforded to it a reasonable opportunity, either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; or unless, also, they shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Trustee, to be

conditions precedent to the execution of the powers and 3159
trusts of this indenture and to any action or cause of action, for foreclosure or for the appointment of a receiver, or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and coupons shall have any right in any manner whatever to affect, disturb or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided, and for the equal benefit of all holders of 3160
such outstanding bonds and coupons.

Sec. 14. No delay or omission of the Trustee, or of any holder of bonds hereby secured, to exercise any right or power accruing upon any default, continuing as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default, or of any subsequent default, or an acquiescence therein; and every power and remedy given by this article to the Trustee, or to the bondholders, may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the bondholders. 3161

ARTICLE SIX.

No recourse under or upon any obligation, covenant or agreement contained in this indenture, or in any bond or coupon hereby secured, or because of the creation of any indebtedness hereby secured, shall be had against any stockholder, officer or director of either of the Railway Companies, or of any successor corporation, either directly or through either of the Railway Companies, by the enforcement of any assessment or by any legal or equitable proceeding by virtue 3162
of any statute or otherwise; it being expressly agreed and understood that this indenture, and the obligations hereby secured, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, the stockholders, officers or directors of either of the Railway Companies because of the incurring of the indebtedness hereby authorized, or under or by reason of any of the obligations, cove-

3163 nants or agreements contained in this indenture, or in any of the bonds or coupons hereby secured, or implied therefrom; and that any and all personal liability of every name and nature, and any and all rights and claims against, every such stockholder, officer or director, whether arising at common law or in equity, or created by statute or constitution, are hereby expressly released and waived as a condition of, and as part of the consideration for, the execution of this indenture and the issue of the bonds and interest obligations secured thereby.

3164

ARTICLE SEVEN.

Section 1. Any request or other instrument, required by this indenture to be signed and executed by bondholders, may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent, and of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any
3165 purpose of this indenture, and shall be conclusive in favor of the Trustee with regard to due action taken by it under such request or other instrument, if made in the following manner:

The fact and date of the execution by any person of any such request, or other instrument, or writing, may be proved by an affidavit of a witness to such execution, or by the certificate of any notary public, or other officer, authorized to take acknowledgments of deeds to be recorded in New York, that the person, signing such request or other instrument, acknowledged to him the execution thereof.

3166 The amount of coupon bonds transferable by delivery, held by any person executing any such request or other instrument as a bondholder, and the amounts and issue numbers of the bonds held by such person, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers or other depositary (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing therein that at the date therein men-

tioned such person had on deposit with such depositary the 3167
bonds described in such certificate. The ownership of registered coupon bonds or of registered bonds without coupons shall be proved by the registers of such bonds.

Sec. 2. The Railway Companies and the Trustee may deem and treat the bearer of any coupon bond hereby secured, which shall not at the time be registered as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon as the case may 3168
be, for the purpose of receiving payment thereof and for all other purposes; and neither the Railway Companies nor the Trustee shall be affected by any notice to the contrary.

The Railway Companies and the Trustee may deem and treat the person in whose name any registered bond without coupons issued hereunder shall be registered upon the books of the Railway Companies, as hereinbefore provided, as the absolute owner of such bond for the purpose of receiving payment of, or on account of, the principal and interest of such bond, and for all other purposes, and may deem and treat the person in whose name any coupon bond shall be so registered 3169
as the absolute owner thereof for the purpose of receiving payment of, or on account of, the principal thereof, and for all other purposes except to receive payment of interest represented by outstanding coupons; and all such payments so made to any such registered holder for the time being, or upon his order, shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

ARTICLE EIGHT.

3170

Section 1. The Trustee shall not be answerable for the default or the misconduct of any agent or attorney appointed in pursuance hereof, if such agent or attorney shall have been selected with reasonable care; nor shall the Trustee be responsible for anything whatever in connection with this trust, except willful misconduct or gross negligence. The Trustee shall not be under any obligation to take any action towards

3171 the execution or enforcement of the trusts hereby created, which, in the opinion of the Trustee, shall be likely to involve expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the Trustee, furnish reasonable indemnity against such expense or liability; nor shall the Trustee be required to take notice of any default hereunder, unless notified in writing of such default by the holders of at least five per cent, in amount of the bonds hereby secured then outstanding, or to take any action in respect of any default unless requested to take action in
3172 respect thereof by a writing signed by the holders of not less than twenty-five per cent in amount of the bonds hereby secured, then outstanding, and tendered reasonable indemnity as aforesaid, anything herein contained to the contrary notwithstanding; but the foregoing provisions of this section are intended only for the protection of the Trustee, and shall not be construed to affect any discretion or power by any provision of this indenture given to the Trustee to determine whether or not it shall take action in respect of any default, without such notice or request from bondholders, or to affect any other discretion or power given to the Trustee.

3173 The Trustee shall be reimbursed for, and be indemnified against, any liability or damages which may be sustained by it in the premises, and shall have a lien secured hereby upon the property covered by this indenture, for its compensation and expenses, and also for any such liability or damages.

The Trustee shall not be responsible in any manner whatsoever for the validity hereof, or for the security afforded by the property covered hereby, or for the recitals herein or in said bonds contained; nor shall the Trustee be accountable for the use of any bonds certified and delivered by the Trustee hereunder or for the application of the proceeds of such bonds.

3174 The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, and the Railway Companies agree to pay such compensation as well as all expenses necessarily incurred or disbursed by the Trustee hereunder.

Sec. 2. The Trustee may resign, and be discharged from the trusts created by this indenture by giving to the Railway

Companies and to the bondholders, notice by publication of 3175
such resignation, specifying a date when such resignation shall take effect, which notice shall be published at least once on a day not less than thirty days nor more than sixty days prior to the date so specified, in a newspaper at that time published in New York, N. Y., and in a newspaper published in Boston, Mass. Such resignation shall take effect on the day specified in such notice, unless previously a successor trustee shall be appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee.

Any trustee hereunder may be removed at any time by an 3176
instrument in writing filed with the Trustee and executed by the holders of two-thirds in amount of the bonds hereby secured and then outstanding.

Sec. 3. In case at any time the Trustee shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in amount of the bonds hereby secured then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys-in-fact duly authorized; but until a new Trustee shall be appointed by the bondholders as herein 3177
authorized, the Railway Companies, by an instrument executed by order of their respective boards of directors, may appoint a trustee to fill such vacancy; provided, however, that every such successor trustee shall always be a trust company having a capital and surplus aggregating at least $2,000,000, if there be such a trust company willing and able to accept the trust upon reasonable or customary terms. After any such appointment by the Railway Companies, they shall cause notice of such appointment to be published once in each of four successive weeks in a newspaper published in New York, N. Y., and in a newspaper published in Boston, Mass.; but any 3178
new trustee so appointed by the Railway Companies shall immediately and without further act be superseded by a trustee appointed in the manner above provided by the holders of a majority in amount of the bonds hereby secured.

Any successor trustee appointed hereunder shall execute, acknowledge and deliver to the Railway Companies an instrument accepting such appointment hereunder, and thereupon

such successor trustee, without any further act, deed or conveyance, shall become vested with the title to the pledged shares of the capital stock of the Burlington Company, and with all the rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder with like effect as if originally named as trustee herein; and the trustee ceasing to act shall assign and transfer to the successor trustee all said pledged shares of the capital stock of the Burlington Company and shall deliver to such successor trustee the certificates therefor. Upon request of such successor trustee the Railway Companies shall execute and deliver such instruments of assignment and further assurance that may reasonably be required for more fully and certainly vesting and confirming to such successor trustee all the right, title and interest of the Trustee in and to such shares and such rights, powers, trusts, duties and obligations.

ARTICLE NINE.

If, when the bonds hereby secured shall have become due and payable, the Railway Companies shall well and truly pay, or cause to be paid, the whole amount of the principal moneys and interest due upon all of the bonds and coupons for interest thereon hereby secured, then outstanding, or shall provide for such payment by depositing with the Trustee hereunder, for the payment of such bonds and coupons, the entire amount due thereon for principal and interest, and also shall pay, or cause to be paid, all other sums payable hereunder by the Railway Companies, and shall well and truly keep and perform all the things herein required to be kept and performed by them according to the true intent and meaning of this indenture, then and in that case all said shares of stock and all property then held hereunder shall revert to the Railway Companies and the estate, rights, title and interest of the Trustee shall thereupon cease, determine and become void, and the Trustee in such case shall transfer and deliver to each of the Railway Companies, its assigns or nominees, at its or their cost and expense one-half of all said shares of stock and other property.

ARTICLE TEN.

Any written demand, request, notice, designation, direction or nomination to be made by the Railway Companies or by either one of them, under any of the provisions hereof, shall be deemed sufficiently made and executed, if signed by the president, or by a vice-president, of the Railway Companies, or of the railway company, in whose behalf the same shall purport to be made. The Trustee may receive a certificate signed by the secretary, or by an assistant secretary, of either 3184
railway company as sufficient evidence of the passage of any resolution by the board of directors, or by the executive committee, of such railway company.

The terms "Northern Pacific Company," "Great Northern Company" and "Railway Companies," wherever used in this indenture, shall be held to include such company or companies and its or their respective successors and assigns; and all the covenants hereof binding upon or for the benefit of the Railway Companies shall bind and shall enure to the benefit of their respective successors and assigns. The term "the firm of J. P. Morgan & Co.," when herein used, shall include and 3185
mean not only said firm as now constituted, but also any successor firm however constituted.

Subject in all respects to the prior and paramount lien of this indenture and to all rights and provisions thereof for the benefit of the holders of the bonds hereby secured, each railway company may assign and transfer its interest in said pledged stock, including its rights under sections 2 and 3 of article three hereof, to collect dividends and to vote upon said pledged shares, and the Railway Companies from time to time, by agreements between themselves, may adjust and re-
adjust or modify their respective rights and interests in re- 3186
spect of such pledged shares.

The term "Trustee," when herein used, shall be held and construed to mean the trustee for the time being, whether original or successor; and the words "Trustee," "bond," "bondholder" and "holder" shall include the plural as well as the singular number.

3187 In witness whereof, on the day and year first above written, the Northern Pacific Company, the Great Northern Company and the Trustee, each respectively has caused this indenture to be signed by its president or by one of its vice-presidents, and its corporate seal to be hereunto affixed, and the same to be attested by the signature of its secretary or one of its assistant secretaries.

NORTHERN PACIFIC RAILWAY COMPANY.

[Seal] By Daniel S. Lamont, Vice-President.

Attest:

Geo. H. Earl, Secretary.

3188 GREAT NORTHERN RAILWAY COMPANY,

[Seal] By W. P. Clough, Vice-President.

Attest:

Edwd. T. Nichols, Secretary.

THE STANDARD TRUST COMPANY OF NEW YORK,
Trustee,

By L. L. Stanton, Vice-President.

Attest:

Wm. C. Cox, Secretary.

3189 STATE OF NEW YORK,

ss.

City and County of New York.

Be it remembered that on this twelfth day of July, A. D. 1901, before me, the subscriber, personally came Daniel S. Lamont, the vice-president, and George H. Earl, the secretary of the Northern Pacific Railway Company, each of whom is to me well known, who, being by me severally duly sworn, each of them for himself did depose and say that the said Daniel S. Lamont resides in the city of New York, in the State of
3190 New York, and is vice-president of the Northern Pacific Railway Company, one of the corporations described in and which executed the foregoing instrument, and that the said George H. Earl resides in Jersey City, in the State of New Jersey, and is secretary of said corporation; that the seal affixed to the foregoing instrument as the seal of said corporation is the corporate seal thereof, and that it was affixed by authority of the board of directors of said corporation; that the said

Daniel S. Lamont signed his name thereto as vice-president 3191
and the said George H. Earl signed his name thereto as secretary by like authority; and they severally acknowledged to me that the same was done as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and notarial seal this twelfth day of July, 1901.

WM. H. BRUDER,

[Seal] Notary Public, County of New York, N. Y.

STATE OF NEW YORK, 3192

ss.

City and County of New York.

Be it remembered that on this twelfth day of July, A. D. 1901, before me, the subscriber, personally came William P. Clough, the vice-president, and Edward T. Nichols, the secretary of the Great Northern Railway Company, each of whom is to me well known, who, being by me severally duly sworn, each of them for himself did depose and say that the said William P. Clough resides in the city of St. Paul, in the State of Minnesota, and is vice-president of the Great Northern Rail- 3193
way Company, one of the corporations described in and which executed the foregoing instrument, and that the said Edward T. Nichols resides in Morristown, New Jersey, and is secretary of said corporation; that the seal affixed to the foregoing instrument as the seal of said corporation is the corporate seal thereof, and that it was affixed by authority of the board of directors of said corporation; that the said William P. Clough signed his name thereto as vice-president and the said Edward T. Nichols signed his name thereto as secretary by like authority; and they severally acknowledged to me that the same was so done as the free and voluntary act and deed of 3194
said corporation,

In witness whereof, I have hereunto set my hand and notarial seal this twelfth day of July, 1901.

WM. H. BRUDER,

[Seal] Notary Public, County of New York, N. Y.

3195 STATE OF NEW YORK,

ss.

City and County of New York.

Be it remembered that on this twelfth day of July, A. D. 1901, before me, the subscriber, personally came Louis L. Stanton, the vice-president, and William C. Cox, the secretary, of The Standard Trust Company of New York, each of whom is to me well known, who, being by me severally duly sworn, each of them for himself did depose and say that the said
3196 Louis L. Stanton resides in the city of New York, in the State of New York, and is vice-president of The Standard Trust Company of New York, one of the corporations described in and which executed the foregoing instrument, and that the said William C. Cox resides in the city of New York, and is secretary of said corporation; that the seal affixed to the foregoing instrument as the seal of said corporation is the corporate seal thereof, and that it was affixed by authority of the board of directors of said corporation; that the said Louis L. Stanton signed his name as vice-president, and the said William C. Cox signed his name thereto as secretary, by like au-
3197 thority, and they severally acknowledged to me that the same was so done as the free and voluntary act and deed of said corporation.

In witness whereof, I have hereunto set my hand and notarial seal this twelfth day of July, 1901.

WM. H. BRUDER,

[Seal] Notary Public, County of New York, N. Y.

COMPLAINANT'S EXHIBIT 9. 801

[Complainant's Exhibit 9.] 3198

Map prepared by Minnesota Railway Commission, edition of 1901, will be found opposite.

[Complainant's Exhibit 10.]

NORTHERN SECURITIES COMPANY.

3199

JAMES J. HILL—President.
JOHN S. KENNEDY, First Vice-President.
GEORGE F. BAKER—Second Vice-President.
D. WILLIS JAMES—Third Vice-President.
W. P. CLOUGH—Fourth Vice-President.
E. T. NICHOLS—Secretary and Treasurer.

27-29 Pine Street, New York City,
November 22d, 1901.

TO HOLDERS OF STOCK OF THE GREAT NORTHERN RAILWAY COMPANY: 3200

The Northern Securities Company, incorporated under the laws of the State of New Jersey, with an authorized capital stock of $400,000,000, and with power to invest in and hold the securities of other companies, has commenced business, and has acquired from several large holders of stock of the Great Northern Railway Company a considerable amount of that stock.

A uniform price has been paid of $180 per share, in the fully-paid stock of this Company, at par. This Company is ready to purchase additional shares of the same stock at the same price, payable in the same manner, and will accept 3201 offers made on that basis if made within the next sixty days.

Offers for sale of stock of the Great Northern Railway Company should be made upon the enclosed form, and should be accompanied by the certificates of the stock offered with transfers duly executed, having United States stamps for transfer tax of two cents per share affixed.

3202 Upon receipt of any such offer, so accompanied, the Northern Securities Company will deliver to the seller of the stock of the Great Northern Railway Company, certificates of its own stock to the amount of the purchase price above named, or, if such certificates are not then ready for delivery, its negotiable receipt, obliging it to issue and deliver such certificates as soon as ready. For fractional parts of shares scrip certificates convertible into stock in multiples of $100 will be given.

NORTHERN SECURITIES COMPANY,

3203 By James J. Hill,
President.

TO THE NORTHERN SECURITIES COMPANY, NEW YORK:

The subscriber hereby offer to sell and deliver to the Northern Securities Company ———————— shares in the capital stock of the Great Northern Railway Company, represented by the certificates hereto attached, for the price of one hundred and eighty dollars ($180) per share, payable in the fully paid stock of the Northern Securities Company, at par, in ac-
3204 cordance with the terms of the circular of the latter named Company, dated November 22d, 1901.

The stock of the Northern Securities Company to be paid in accordance with the foregoing tender should be issued as follows:

Shares.	Name.	Full Address.

Dated ————————, 190

3205 [Complainant's Exhibit 11.]

(Copy.)

November 30th, 1901.

Dear Sir:

Replying to your letter of the 23d instant, asking for further information about the Northern Securities Company, I beg to say that the business of that Company is to deal in

high-class securities, to hold the same for the benefit of its 3206
shareholders and to do such other acts as will advance the interests of the Companies whose securities it holds.

The powers of the Company do not include the operation of railways, banking, nor buying or selling for others on commission.

The organization of such a Company has been considered for many years by the original promoters of the St. Paul, Minneapolis and Manitoba Railway Company, and its successor, the Great Northern Railway Company, who have always remained the largest shareholders therein. These men 3207
have deemed it wise to make permanent arrangements for the protection of their interests and for securing a continuous policy in the management of their properties. Believing the Northern Securities Company will secure the objects named, they have generally sold to it their holdings of Great Northern shares, on the terms stated in the circular.

The traffic of Coal and other local Companies is of great value to the Railway, while the conduct of the business of such Companies is outside of the Railway's corporate powers. The Securities Company will control this large traffic for the Railway and will receive the profits of these separate proper- 3208
ties.

The offer contained in the circular came from the request of the large holders of Great Northern, above mentioned, who desired that all other holders might have the same opportunities as themselves in association with them, and upon the same terms. The writer is of opinion that the offer of the Securities Company is one that Great Northern shareholders can accept with profit and advantage to themselves.

Yours truly,

(Signed) JAS. J. HILL.

3209

[Complainant's Exhibit 12.]

BY-LAWS OF NORTHERN SECURITIES COMPANY. ADOPTED BY THE INCORPORATORS NOVEMBER 13, 1901. AMENDED BY THE BOARD OF DIRECTORS NOVEMBER 14, 1901. RATIFIED BY THE BOARD OF DIRECTORS IN AMENDED FORM NOVEMBER 29, 1901.

BY,LAWS OF NORTHERN SECURITIES COMPANY.

3210

ARTICLE I.—*Stockholders.*

Section 1. Annual Meeting.—A meeting of the stockholders of the company shall be held annually at the principal office of the company, in the State of New Jersey, at 12 o'clock noon on the second Monday in November in each year, if not a legal holiday, and if a legal holiday then on the next succeeding Monday not a legal holiday, for the purpose of electing directors, and for the transaction of such other business as may be brought before the meeting.

3211 It shall be the duty of the secretary to cause notice of each annual meeting to be published once in each of the four calendar weeks next preceding the meeting in at least one newspaper in each of the following places: Jersey City, N. J., and New York, N. Y. Nevertheless, a failure to publish such notice, or any irregularity in such notice or in the publication thereof, shall not affect the validity of any annual meeting, or of any proceedings at any such meeting.

Sec. 2. Special Meetings.—Special meetings of the stockholders may be held at the principal office of the company in the State of New Jersey, whenever called in writing or by vote

3212 by a majority of the board of directors.

Notice of the time and place of each special meeting shall by the secretary be published one in each of the two calendar weeks next preceding the meeting in at least one newspaper in each of the following places: Jersey City, N. J., and New York, N. Y. Nevertheless, if all the stockholders shall waive notice of a special meeting, no notice of such meeting shall be required; and whenever all the stockholders shall meet in per-

son or by proxy; such meeting shall be valid for all purposes 3213
without call or notice, and at such meeting any corporate action may be taken.

Sec. 3. Quorum.—At any meeting of the stockholders the holders of a majority of all the shares of capital stock of the company, present in person or represented by proxy, shall constitute a quorum of the stockholders for all purposes, unless the representation of a larger number shall be required by law, and in that case the representation of the number so required shall constitute a quorum.

If the holders of the amount of stock necessary to constitute 3214
a quorum shall fail to attend in person or by proxy at the time and place fixed by these by-laws for an annual meeting, or fixed by notice as above provided for a special meeting called by the directors, a majority in interest of the stockholders present in person or by proxy may adjourn, from time to time, without notice other than by announcement at the meeting, until holders of the amount of stock requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified. 3215

Sec. 4. Organization.—The president, and, in his absence, one of the vice-presidents, in order of their numbers, beginning with the first, shall call meetings of the stockholders to order, and shall act as chairman of such meetings. The board of directors may appoint any stockholder to act as chairman of any meeting in the absence of the president and all the vice-presidents.

The secretary of the company shall act as secretary at all meetings of the stockholders; but in the absence of the secretary at any meeting of the stockholders the presiding officer may appoint any person to act as secretary of the meeting. 3216

Sec. 5. Voting.—At each meeting of the stockholders every stockholder shall be entitled to vote in person, or by proxy appointed by instrument in writing, subscribed by such stockholder or by his duly authorized attorney, and delivered to the inspectors at the meeting; and he shall have one vote for each share of stock standing registered in his name at the time of the closing of the transfer books for said meeting. The votes

for directors, and, upon demand of any stockholder, the votes upon any question before the meeting shall be by ballot.

At each meeting of the stockholders a full, true, and complete list, in alphabetical order, of all of the stockholders entitled to vote at such meeting, and indicating the number of shares held by each, certified by the secretary or by the treasurer, shall be furnished. Only the persons in whose names shares of stock stand on the books of the company at the time of the closing of the transfer books for such meeting, as evidenced by the list of stockholders so furnished, shall be entitled to vote in person or by proxy on the shares so standing in their names.

Prior to any meeting, but subsequent to the time of closing the transfer books for such meeting, any proxy may submit his powers of attorney to the secretary or to the treasurer for examination. The certificate of the secretary or of the treasurer as to the regularity of such powers of attorney, and as to the number of shares held by the persons who severally and respectively executed such powers of attorney, shall be received as prima facie evidence of the number of shares represented by the holder of such powers of attorney, for the purpose of establishing the presence of a quorum at such meeting, and of organizing the same, and for all other purposes.

Sec. 6. Inspectors.—At each meeting of the stockholders the polls shall be opened and closed; the proxies and ballots shall be received and be taken in charge; and all questions touching the qualification of voters and the validity of proxies, and the acceptance or rejection of votes, shall be decided by two inspectors. Such inspectors shall be appointed by the board of directors before or at the meeting, or, if no such appointment shall have been made, then by the presiding officer at the meeting. If for any reason any of the inspectors previously appointed shall fail to attend, or refuse or be unable to serve, inspectors in place of any so failing to attend, or refusing or unable to attend, shall be appointed in like manner.

ARTICLE II.—*Board of Directors.*

Section 1. Number, Classification, and Term of Office.—The business and the property of the company shall be managed and controlled by the board of directors.

As provided in the certificate of incorporation, the directors 3221
shall be classified in respect of the time for which they shall severally hold office, by dividing them into three classes, each class consisting of one-third of the whole number of the board of directors. The directors of the first class shall be elected for a term of one year; the directors of the second class shall be elected for a term of two years; and the directors of the third class shall be elected for a term of three years. At each annual election the successors to the directors of the class whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of 3222
one class of directors shall expire in each year.

The number of the first board of directors shall be three, but the number of directors may be altered from time to time, and so soon as deemed advisable by the first board of directors shall be increased to fifteen by the alteration of these by-laws.[a]

In case of any increase of the number of directors, the additional directors shall be elected by the directors then in office; one-third of such additional directors for the unexpired portion of the term of one year; one-third for the unexpired portion of the term of two years; and one-third for the unexpired portion of the term of three years; so that each class of directors shall 3223
be increased equally.

[a]At a meeting of the board, held 10 a. m. November 14, 1901, these by-laws were amended by striking out this paragraph and inserting in place thereof the words: "The number of the board of directors shall be fifteen, but the number of directors may be altered from time to time by the alteration of these by-laws."

Every director shall be a holder of at least one share of the capital stock of the company. Each director shall serve for the term for which he shall have been elected and until his successor shall have been duly chosen.

At all elections of the directors the polls shall remain open 3224
for at least one hour, unless every registered owner of shares has sooner voted in person or by proxy or in writing has waived the statutory provision.

Sec. 2. Vacancies.—In case of any vacancy in the directors of any class through death, resignation, disqualification, or other cause, the remaining directors, by affirmative vote of a majority thereof, may elect a successor to hold office for the

3225 unexpired portion of the term of the director whose place shall be vacant and until the election of his successor.

Such vacancy shall be filled upon and after nominations therefor shall have been made by the finance committee.

Sec. 3. Place of Meeting., Etc.—The directors may hold their meetings and may have an office and keep the books of the company (except as otherwise may be provided for by law) in such place or places in the State of New Jersey or outside of the State of New Jersey as the board from time to time may determine.

3226 Sec. 4. Special Meetings.—Special meetings of the board of directors shall be held whenever called by the president or by one-third of the directors for the time being in office.

The secretary shall give notice of each special meeting by mailing the same at least five days before the meeting, or by telegraphing the same at least three days before the meeting, to each director; but such notice may be waived by any director. At any meeting at which every director shall be present, even though without any notice, any business may be transacted.

Sec. 5. Quorum.—A majority of the board of directors 3227 shall constitute a quorum for the transaction of business, but if at any meeting of the board there be less than a quorum present, a majority of those present may adjourn the meeting from time to time.

Sec. 6. Order of Business.—At meetings of the board of directors business shall be transacted in such order as from time to time the board may determine by resolution.

At all meetings of the board of directors, the president, or in his absence one of the vice-presidents, in order of their numbers, beginning with the first, shall preside.

3228 ARTICLE III.—*Executive Committee.*

Section 1. The board of directors may elect from the directors an executive committee. The president shall ex officio be chairman, in his absence, one of the members, in the order of their election, shall act as chairman.

The board of directors shall fill vacancies in the executive committee by election from the directors.

All action by the executive committee shall be reported to 3229
the board of directors at its meeting next succeeding such action, and shall be subject to revision or alteration by the board of directors; Provided, That no rights or acts of third parties shall be affected by any such revision or alteration.

The executive committee shall fix its own rules of proceeding, which rules shall be subject to approval by the board, and shall meet where and as provided by such rules, or by resolution of the board of directors, but in every case the presence of a majority shall be necessary to constitute a quorum.

In every case the affirmative vote of a majority of all of the 3230
members of the committee shall be necessary to its adoption of any resolution.

During the intervals between the meetings of the board of directors, the executive committee shall possess, and may exercise, all the powers of the board of directors in the management and direction of the business and affairs of the company in such manner as the executive committee shall deem best for the interests of the company, in all cases in which specific directions shall not have been given by the board of directors.

3231

ARTICLE IV.—*Officers.*

Section 1. Officers.—The executive officers of the company shall be a president, a vice-president, or more than one vice-president, a treasurer, and a secretary, all of whom shall be elected by the board of directors.

The board of directors may appoint such other officers as they shall deem necessary, who shall have such authority and shall perform such duties as from time to time may be prescribed by the board of directors.

The powers and duties of the treasurer and secretary may be 3232
exercised and performed by the same person.

In its discretion, the board of directors, by the vote of a majority thereof, may leave unfilled for any such period as it may fix by resolution any office except those of president, treasurer, and secretary.

All officers and agents shall be subject to removal at any time by the affirmative vote of a majority of the whole board

3233 of directors. All officers, agents, and employees, other than officers appointed by the board of directors, shall hold office at the discretion of the committee or of the officer appointing them.

Sec. 2. Powers and Duties of the President.—The president shall preside at all meetings of the stockholders and of the board of directors, and by virtue of his office he shall be a member of the executive committee. Subject to the board of directors, or to the executive committee, if any be elected, he shall have general charge of the business of the company, may
3234 sign and execute all authorized bonds, contracts, or other obligations in the name of the company, and, with the treasurer, or an assistant treasurer, may sign all certificates of the shares in the capital stock of the company. He shall do and perform such other duties as from time to time may be assigned to him by the board of directors.

Sec. 3. Vice-Presidents.—Each vice-president shall have such powers, and shall perform such duties, in addition to those mentioned in the by-laws, as may be assigned to him by the board of directors or the executive committee.

Sec. 4. Powers and Duties of Treasurer.—The treasurer
3235 shall have custody of all the funds and securities of the company which may have come into his hands; when necessary or proper, he shall indorse on behalf of the company for collection checks, notes, and other obligations and shall deposit the same to the credit of the company in such bank or banks or depositary as the board of directors or the executive committee may designate; he shall sign all receipts and vouchers for payments made to the company; jointly with the president or a vice-president, or such other officer as may be designated by the board or executive committee, he shall sign all checks made by the company, and shall pay out and dispose of the
3236 same under the direction of the board or of the executive committee; he shall sign, with the president or a vice-president, or such other person or persons as may be designated for the purpose by the board of directors or the executive committee, all bills of exchange and promissory notes of the company; he may sign, with the president or a vice-president, all certificates of shares in the capital stock; whenever required by the board of directors or by the executive committee, he shall render a

statement of his cash account; he shall enter regularly, in 3237
books of the company to be kept by him for the purpose, full and accurate account of all moneys received and paid by him on account of the company; he shall, at all reasonable times, exhibit his books and accounts to any director of the company upon application at the office of the company during business hours, and he shall perform all acts incident to the position of treasurer, subject to the control of the board of directors or of the executive committee.

He shall give security for the faithful discharge of his duties in such sum as the board of directors or the executive commit- 3238
tee may require.

Sec. 6. Assistant Treasurers.—The board of directors or the executive committee may appoint an assistant treasurer or more than one assistant treasurer. Each assistant treasurer shall have such powers and shall perform such duties as may be assigned to him by the board of directors or by the executive committee.

Sec. 7. Powers and Duties of Secretary.—The secretary shall keep the minutes of all meetings of the board of directors and the minutes of all meetings of the stockholders, and also the minutes of all committees, in books provided for that pur- 3239
pose; he shall attend to the giving and serving of all notices of the company; he may sign, with the president or a vice-president, in the name of the company, all contracts authorized by the board of directors or by the executive committee, and when so ordered by the board of directors or executive committee, he shall affix the seal of the company thereto; he shall have charge of the certificate books, transfer books, and stock ledgers, and such other books and papers as the board of directors or the executive committee may direct, all of which shall, at all reasonable times, be open to the examination of any director, upon application at the office of the company during busi- 3240
ness hours; and he shall in general perform all the duties incident to the office of secretary, subject to the control of the board of directors and of the executive committee.

Sec. 8. Assistant Secretaries.—The board of directors or the executive committee may appoint one or more assistant secretaries. Each assistant secretary shall have such powers

3241 and shall perform such duties as may be assigned to him by the board of directors or by the executive committee.

Sec. 9. Auditor.—The auditor shall be the principal officer in charge of the accounts of the company, and shall perform such duties as from time to time may be assigned to him by the board of directors or the executive committee.

ARTICLE V.—*Capital Stock—Seal.*

Section 1. Certificates of Shares.—Certificates for shares of
3242 the capital stock of the company shall be in such form, not inconsistent with the certificate of incorporation, as shall be prepared or be approved by the board of directors. The certificates shall be signed by the president or a vice-president, and also by the treasurer or an assistant treasurer.

All certificates shall be consecutively numbered. The name of the person owning the shares represented thereby, with the number of such shares and the date of issue, shall be entered on the company's books.

No certificate shall be valid unless it be signed by the president or a vice-president ,and by the treasurer or an assistant
3243 treasurer.

All certificates surrendered to the company shall be canceled, and no new certificate shall be issued until the former certificate for the same number of shares of the same class shall have been surrendered and canceled.

Sec. 2. Transfer of Shares.—Shares in the capital stock of the company shall be transferred only on the books of the company by the holder thereof in person, or by his attorney, upon surrender and cancellation of certificates for a like number of shares.

Sec. 3. Regulations.—The board of directors, and the ex-
3244 ecutive committee also, shall have power and authority to make all such rules and regulations as, respectively, they may deem expedient concerning the issue, transfer, and registration of certificates for shares of the capital stock of the company.

The board of directors or the executive committee may appoint one or more transfer agents and a registrar of transfers, and may require all stock certificates to bear the signature of

one of such transfer agents and of such registrar of transfers. 3245

Sec. 4. Closing of Transfer Books.—The stock transfer books shall be closed for the meetings of the stockholders and for the payment of dividends during such periods as from time to time may be fixed by the board of directors or by the executive committee, and during such periods no stock shall be transferable.

Sec. 5. Dividends.—The board of directors may declare dividends from the surplus or net profits of the company over and above the amount which from time to time may be fixed by the board as the amount to be reserved as working capital.

Sec. 6. Working Capital.—The directors shall not be required in January in each year, after reserving over and above its capital stock paid in, as a working capital for said corporation, such sum, if any, as shall have been fixed by the stockholders, to declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount so reserved, and pay the same to such stockholders on demand; but the board of directors may fix a sum which may be set aside or reserved, over and above the company's capital paid in, as a working capital for the company, and from time to time they may increase, diminish, and vary the same in their absolute judgment and discretion.

Sec. 7. Corporate Seal.—The board of directors shall provide a suitable seal containing the name of the company, which seal shall be in charge of the secretary, if and when so directed by the board of directors or by the executive committee. A duplicate of the seal may be kept and used by the treasurer, or by any assistant secretary or assistant treasurer.

ARTICLE VI.—*Amendments.*

Section 1. The board of directors shall have power to make, amend, and repeal the by-laws of the company, by vote of a majority of all the directors, at any regular or special meeting of the board: Provided, That notice of intention to make, amend, or repeal the by-laws, in whole or in part, shall have been given at the next preceding meeting; or without any such notice, by a vote of two-thirds of all of the directors.

3249

[Complainant's Exhibit 13.]

CLASSIFIED LIST OF DIRECTORS OF NORTHERN SECURITIES CO., ELECTED NOVEMBER 14 AND 15, 1901.

For one year:

James J. Hill.
Daniel S. Lamont.
George W. Perkins.

3250

George F. Baker.
N. Terhune.

For two years:

George C. Clark.
Samuel Thorne.
Jacob H. Schiff.
James Stillman.
W. P. Clough.

For three years:

D. Willis James.

3251

John S. Kennedy.
Edward T. Nichols.
Robert Bacon.
E. H. Harriman.

[Complainant's Exhibit 14.]

Map showing railway lines in the Northwest (being defendant's Exhibit 4 in Federal case), will be found on opposite page.

3270

[Complainant's Exhibit 16.]

GREAT NORTHERN RAILWAY LINE.

	Per Cent.	*Per Cent.*
Percentage of Interstate Traffic, the rates on which could be controlled by joint action of Northern Pacific and Great Northern alone	2.78	
Percentage of Interstate Traffic, the rates on which could be controlled by joint action of Northern Pacific and Great Northern, with connecting lines	.65	
Aggregate percentage of above two classes		3.43
Percentage of Interstate Traffic, the rates on which could be controlled only by agreement with lines competing with Northern Pacific and Great Northern	6.89	
Percentage of Interstate Traffic, the rates on which could be controlled only by agreement both with lines competing with Northern Pacific and Great Northern, and with connecting lines	17.09	
Aggregate percentage of above two classes		23.98
Percentage of Interstate Traffic moving between stations on Great Northern Railway Line, neither of which is reached by Northern Pacific Lines		72.59
		100.00

3271

3272

GREAT NORTHERN RAILWAY LINE.

Statement of Freight and Passenger Earnings for Fiscal Year Ended June 30th, 1901.

3273

The total Freight Tariff Earnings of the Great Northern Railway Line (Great Northern, Eastern Railway of Minnesota, Montana Central, Willmar & Sioux Falls, and Duluth, Watertown & Pacific Railways), were $21,623,653.95.

The above earnings consist of:

Local to State through which line passes	$7,013,050.96
Interstate	14,610,602.99

3274 The Interstate Freight Earnings are made up as follows:

		Per Cent.
1. Interstate business forwarded from and to towns where the Northern Pacific also has stations, but which towns can also be reached by other lines of railway	$974,999.17	6.67
2. Interstate business forwarded from and to towns reached by Northern Pacific and Great Northern Railways only	380,117.53	2.60
3. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns on Great Northern Railway where the Northern Pacific Railway also has stations, that are reached by other lines of railway	2,249,642.91	15.40
4. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to or forwarded from towns reached by Northern Pacific and Great Northern Railways only	79,805.69	.55
3276 5. Interstate business not included in above four subdivisions	10,926,037.69	74.78
Total	$14,610,602.99	100.00

The total Passenger Tariff Earnings of the Great Northern Railway for fiscal year ending June 30th, 1901, were $4,909,332.74.

The above earnings consist of:

Local to States through which line passes	$2,599,029.72
Interstate	2,310,303.02

3277

The Interstate Passenger Earnings are made up as follows:

		Per Cent.
1. Interstate business forwarded from and to towns where the Northern Pacific also has stations, but which towns can also be reached by other lines of railway	$190,655.23	8.25

2. Interstate business forwarded from and to towns reached by Northern Pacific and Great Northern Railways only	91,101.35	3.94	3278
3. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns on Great Northern Railway where the Northern Pacific Railway also has stations, that are reached by other lines of railway	641,667.78	27.78	
4. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to or forwarded from towns reached by Northern Pacific and Great Northern Railroads only	30,540.56	1.32	3279
5. Interstate business not included in above four subdivisions	1,356,338.10	58.71	
Total	$2,310,303.02	100.00	

The Total Tariff Earnings (Passenger and Freight) of the Great Northern Railway for fiscal year ending June 30th, 1901, were: 3280

Local to States through which line passes	$9,612,080.68
Interstate	16,920,906.01
Total Tariff Earnings	$26,532,986.69

The Interstate Earnings are made up as follows:

		Per Cent.	
1. Interstate business forwarded from and to towns where the Northern Pacific also has stations, but which towns can also be reached by other lines of railway	$1,165,654.40	6.89	3281
2. Interstate business forwarded from and to towns reached by Northern Pacific and Great Northern Railways only	471,218.88	2.78	
3. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined			

3282	to, or forwarded from, towns on Great Northern Railway where the Northern Pacific Railway also has stations, that are reached by other lines of railway	2,891,310.69	17.09
	4. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to or forwarded from towns reached by Northern Pacific and Great Northern Railways only	110,346.25	.65
	5. Interstate business not included in above four subdivisions	12,282,375.79	72.59
3283	Total	$16,920,906.01	100.00

Correct.

J. G. Drew, Comptroller.

[Complainant's Exhibit 17.]

NORTHERN PACIFIC RAILWAY.

		Per Cent.	*Per Cent.*
3284	Percentage of Interstate Traffic, the rates on which could be controlled by joint action of Great Northern and Northern Pacific alone	2.89	
	Percentage of Interstate Traffic, the rates on which could be controlled by joint action of Great Northern and Northern Pacific, with connecting lines	4.90	
	Aggregate percentage of above two classes		7.79
	Percentage of Interstate Traffic, the rates on which could be controlled only by agreement with lines competing with Great Northern and Northern Pacific	2.58	
3285	Percentage of Interstate Traffic, the rates on which could be controlled only by agreement both with lines competing with Great Northern and Northern Pacific, and with connecting lines	13.25	
	Aggregate percentage of above two classes		15.83
	Percentage of Interstate Traffic moving between stations on Northern Pacific system, neither of which is reached by Great Northern lines		76.38
			100.00

COMPLAINANT'S EXHIBIT 17. 823

3286

NORTHERN PACIFIC RAILWAY COMPANY.

Statement of Freight and Passenger Earnings for Fiscal Year Ending June 30th, 1901.

The Total Freight Tariff Earnings of the Northern Pacific Railway for the year ending June 30th, 1901, were $23,036,438.22.

The above earnings consist of:

3287

Local to State through which line passes	$7,955,094.34
Interstate	15,081,343.88

The Interstate Freight Earnings are made up as follows:

		Per Cent.
1. Interstate business forwarded from and to towns where the Great Northern also has stations, but which towns can also be reached by other lines of railway	$305,156.60	2.02
2. Interstate business forwarded from and to towns reached by Great Northern and Northern Pacific railways only	337,172.69	2.24
3. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns on Northern Pacific Railway, that are reached by other lines of railway	2,125,502.37	14.10
4. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns reached by Northern Pacific and Great Northern Railways only	866,077.57	5.74
5. Interstate business not included in above four subdivisions	11,447,424.65	76.90
Total	$15,081,343.88	100.00

3288

3289

3290 **The Total Passenger Tariff Earnings of the Northern Pacific Railway, for fiscal year ending June 30th, 1901, were $7,017,823.41.**

The above earnings consist of:

Local to States through which line passes	$2,845,314.47
Interstate	4,172,508.94

The Interstate Passenger Earnings are made up as follows:

			Per Cent.
3291	1. Interstate business forwarded from and to towns where the Great Northern also has stations, but which towns can also be reached by other lines of railway	$191,865.45	4.60
	2. Interstate business forwarded from and to towns reached by Great Northern and Northern Pacific Railways only	217,222.55	5.21
	3. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns on Northern Pacific Railway, that are reached by other		
3292	lines of railway	425,486.35	10.20
	4. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns reached by Northern Pacific and Great Northern Railways only	76,896.20	1.84
	5. Interstate business not included in above four subdivisions	3,261,038.39	78.15
	Total	$4,172,508.94	100.00

3293 **The Total Tariff Earnings (Passenger and Freight) of the Northern Pacific Railway for fiscal year ending June 30th, 1901, were:**

Local to States through which line passes	$10,800,408.81
Interstate	19,253,852.82
Total Tariff Earnings	$30,054,261.63

COMPLAINANT'S EXHIBIT 17. 825

The Interstate Earnings are made up as follows: 3294

		Per Cent.	
1. Interstate business forwarded from and to towns where the Great Northern also has stations, but which towns can also be reached by other lines of railway	$497,032.05	2.58	
2. Interstate business forwarded from and to towns reached by Great Northern and Northern Pacific Railways only	554,395.24	2.89	
3. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns on Northern Pacific Railway, that are reached by other lines of railway	2,550,988.72	13.25	3295
4. Interstate business originating or terminating on connecting lines, carried via junctions common to both Northern Pacific and Great Northern Railways, and which was destined to, or forwarded from, towns reached by Northern Pacific and Great Northern Railways only	942,973.77	4.90	
5. Interstate business not included in above four subdivisions	14,708,463.04	76.38	3296
Total	$19,253,852.82	100.00	

St. Paul, Minn., October 23d, 1902.

Correct.

Henry A. Gray, Comptroller.

[Complainant's Exhibit 18.]

Data from Annual Reports of Roads Forming the Great Northern Railway System for the Years Ended June 30, 1897, to 1901, Inclusive.

Item.	1897.	Year Ended June 30th— 1898.	1899.	1900.	1901.
Capital Stock Outstanding in Hands of Public:					
G. N. Ry. Co., page 17 of Report to I. S. C. Com.	$25,000,000.00	$25,000,000.00	$89,226,610.00	$98,413,500.00	$98,711,750.00
St. Paul, Minneapolis & Manitoba Ry. Co. (see note)	20,000,000.00	20,000,000.00	504,800.00	469,200.00	454,600.00
Funded Debt Outstanding in Hands of Public:					
G. N. Ry. Co., page 19 of Report to I. S. C. Com.	15,000,000.00	15,000,000.00	36,000.00	.....	.....
St. Paul, Minneapolis & Manitoba Ry. Co.	70,795,854.54	71,723,454.54	71,257,454.54	70,631,454.54	70,037,454.54
Proprietary companies	20,346,000.00	25,946,000.00	25,946,000.00	25,946,000.00	26,646,000.00
Total capitalization of system	$151,141,854.54	157,669,454.54	$186,970,864.54	$195,460,154.54	$195,849,804.54
Mileage of system covered by above capitalization*	4,390.19	4,529.11	5,148.48	5,404.20	5,429.18
Great Northern Railway Co.:					
Net income, page 31 of Report to I. S. C Com.	$2,457,267.23	$3,571,768.71	$5,638,225.72	$8,626,541.46	$6,897,369.07
Dividends	1,250,000.00	1,500,000.00	3,851,033.76	6,408,777.72	6,897,369.07
Surplus	$1,207,267.23	$2,071,768.71	$1,787,191.96	$2,217,763.74	.....

*In addition to this mileage, the capitalization covers a fleet of two passenger steamers (costing nearly $2,000,000), and six freight steamers (costing over $1,500,000), operating on the Great Lakes, between Buffalo, N. Y., and Duluth, Minn.

COMPLAINANT'S EXHIBIT 18—*Continued.*

EXPLANATORY NOTES.

Capital Stock of Great Northern Ry. Co.: Original issue of 1890, from which there were acquired properties and securities to value of $21,839,523.90, as per statement given on page 16 of Report to Commission for the five months ended June 30, 1890	$20,000,000.00
Page 39 of that report gives list of stocks acquired and includes the entire outstanding capital stock of the Eastern Railway Co. of Minnesota, Montana Central Railway Co., Willmar & Sioux Falls Railway Co., Duluth, Watertown & Pacific Ry. Co., Minneapolis Union Railway Co., and Northern Steamship Company, from which it will appear that the $20,000,000 of Great Northern Railway stock above mentioned was the only stock in the hands of the public on the mileage of these companies.	
During year ended June 30th, 1894, there was issued at par for cash, additional stock to amount of.. to pay for improvements, additional properties, etc. See pages 16-17 and 53 of Report to Commission for this year.	5,000,000.00
This accounts for the amount of capital stock shown as outstanding in hands of public June 30th, 1897 and 1898	$25,000,000.00

COMPLAINANT'S EXHIBIT 18—*Continued.*

EXPLANATORY NOTES.

1899: See page 53 of Report to Commission, for year ended June 30th, 1899.
The following stock was issued during the year and for the purposes mentioned:

To redeem $15,000,000 G. N. Ry. collateral trust bonds ..... (Shown on same page that $14,964,000 of these bonds had been redeemed June 30th, 1899. The balance were redeemed the following year, as shown by the report for that year.)	$15,000,000.00
To purchase the capital stock of the Seattle & Montana R. R. Co..... (From page 37 of same report, it will be seen that $12,499,550 of this stock had been acquired during the year at a cost of $9,999,640. The mileage of the Seattle & Montana R. R. is therefore covered by the amount of Great Northern Ry. stock outstanding.)	10,000,000.00
In exchange for 194,952 shares ($19,495,200) of the capital stock of the St. P., M. & M. Ry. Co. (See page 37 of Report.)	24,369,000.00
To purchase 75,000 shares of additional capital stock issued by the Eastern Railway Co. of Minn. ..... (See page 37 of Report.)	7,500,000.00
To purchase the securities of the Spokane Falls & Northern Ry. system. (See pages 36 and 37 of Report to Commission for year ended June 30, 1900. The mileage of the S. F. & N. system is therefore covered by the amount of G. N. Ry. stock outstanding.....	7,357,610.00
Total June 30th, 1899.....	$89,226,610.00

EXPLANATORY NOTES.

1900: See page 53 of Report to Commission for year ended June 30, 1900:

In exchange of 356 shares ($35,600) of the capital stock of the St. P., M. & M. Ry. Co.....	$44,500.00
To purchase securities of Spokane Falls & Northern Ry. system.....	142,390.00
To purchase 35,000 shares of additional capital stock issued by the Eastern Ry. Co. of Minn.	3,500,000.00
To purchase 55,000 shares of additional capital stock issued by Willmar & Sioux Falls Ry. Co.	5,500,000.00
(Page 37 of Report for this year shows the acquisition of these additional securities.)	
Total to June 30, 1900.....	$98,413,500.00

1901: See page 53 of Report for this year:

In exchange for 146 shares ($14,600) capital stock St. Paul, Minneapolis & Manitoba Ry. Co.	$18,250.00
Issued for cash at par for improvements, etc.....	280,000.00
Total June 30, 1901.....	$98,711,750.00

Capital Stock of St. Paul, Minneapolis & Manitoba Ry. Co.:

The amount entered for 1899 and subsequent years is the difference between the outstanding capital stock of this company, $20,000,000, as given on page 17 of its Report to the Commission each year, and the amount of that stock owned by the Great Northern Ry Co., and acquired with its own capital stock, as shown on page 37 of the Report made to the Commission each year by the Great Northern Ry. Co.

Funded Debt of St. Paul, Minneapolis & Manitoba Ry. Co., Outstanding in Hands of Public:

The figures given may be verified by referring to page 19 of the reports made by the St. P., M. & M. Ry. Co. to the Commission for the year named, deducting in each case from the amount shown on that page the sum of $14,303,030.31, account of St. P., M. & M. Ry. Co.'s Pacific extension bonds owned by the Great Northern Ry. Co. During the years 1897 and 1898 these Pacific extension bonds were deposited as collateral security for the $15,000,000. Great Northern Ry. bonds shown. Since the payment of the Great Northern's bonds with proceeds of additional capital stock, as above explained, the St. P., M. & M. Ry. Pacific extension bonds have been free assets in the Great Northern treasury.

COMPLAINANT'S EXHIBIT 18—*Continued.*

FUNDED DEBT OF PROPRIETARY COMPANIES OUTSTANDING IN HANDS OF PUBLIC.

Items.	1897.	1898.	1899.	1900.	1901.
Eastern Ry. Co. of Minnesota:					
First Division, first mortgage	$4,700,000.00	$4,700,000.00	$4,700,000.00	$4,700,000.00	$4,700,000.00
Northern Division, first mortgage	.....	5,000,000.00	5,000,000.00	5,000,000.00	5,000,000.00
Montana Central Ry. Co.:					
First mortgage, 6 per cent	6,000,000.00	6,000,000.00	6,000,000.00	6,000,000.00	6,000,000.00
First mortgage, 5 per cent	2,700,000.00	3,300,000.00	3,300,000.00	3,300,000.00	4,000,000.00
Willmar & Sioux Falls Ry. Co.:					
First mortgage	3,646,000.00	3,646,000.00	3,646,000.00	3,646,000.00	3,646,000.00
Minneapolis Union Ry. Co.:					
First mortgage, 6 per cent	2,150,000.00	2,150,000.00	2,150,000.00	2,150,000.00	2,150,000.00
First mortgage, 5 per cent	650,000.00	650,000.00	650,000.00	650,000.00	650,000.00
Minneapolis Western Ry. Co.:					
First mortgage	500,000.00	500,000.00	500,000.00	500,000.00	500,000.00
Totals	$20,346,000.00	$25,946,000.00	$25,946,000.00	$25,946,000.00	$26,646,000.00

The above figures may be verified by reference to the reports made by the several companies named, to the Commission for the years shown by the column headings.

COMPLAINANT'S EXHIBIT 18—*Continued.*

MILEAGE OF SYSTEM COVERED BY CAPITALIZATION.

Company.	1897.	1898.	1899.	1900.	1901.
St. Paul, Minneapolis & Manitoba Ry. Co....	3,779.87	3,813.90	3,816.12	3,814.41	3,802.98
Eastern Ry. Co. of Minnesota.....	72.39	172.33	412.92	410.95	457.31
Duluth Terminal Ry. (entire stock and bonds of this company owned by Eastern Ry. Co. of Minnesota).....	1.78	1.78	1.78	1.78	1.82
Montana Central Ry. Co.....	256.74	261.69	261.95	261.95	260.51
Willmar & Sioux Falls Ry. Co.....	205.25	205.25	205.25	433.41	433.41
Duluth, Watertown & Pacific Ry. Co.....	69.84	69.84	69.84	69.84	69.84
Minneapolis Union Ry. Co.....	2.63	2.63	2.63	2.63	2.63
Minneapolis Western Ry. Co. (entire capital stock of this company purchased by Great Northern Ry. Co. for cash, and such stock will be found entered on page 37 of the Report made by the G. N. Ry. Co. to the Commission for each of these years)	1.69	1.69	1.69	1.69	1.69
Seattle & Montana R. R. Co.....	.....	.....	159.10	151.39	146.92
Spokane Falls & Northern Ry. system.....	.....	.....	217.20	207.11	203.03
Park Rapids & Leech Lake Ry. Co. (entire stock and bonds of this company owned by E. Ry. Co. of Minn.).....	.....	.....	.....	49.04	49.04
Totals	4,390.19	4,529.11	5,148.48	5,404.20	5,429.18

30063

3321

[Complainant's Exhibit 19.]

REORGANIZATION OF THE NORTHERN PACIFIC RAILROAD COMPANY.

Reorganization committee, Edward D. Adams, chairman; John C. Bullitt, Louis Fitzgerald, Charles H. Godfrey, J. D. Probst, James Stillman, Ernst Thalmann.

Charles C. Beaman, Wm. Nelson Cromwell, counsel to the
3322 reorganization committee.

Arnold Marcus, secretary.

Protective committee: Brayton Ives, chairman; August Belmont, George R. Sheldon, Charlemagne Tower, Jr., Silas W. Pettit, counsel.

Depositaries: J. P. Morgan & Co., New York; Drexel & Co., Philadelphia; Deutsche Bank, Berlin, and its branches at Frankfort-on-Main, Bremen, Hamburg, Munich, and London.

Francis Lynde Stetson, Victor Morawetz, counsel to the reorganization managers.

New York, March 16, 1896.

3323

REORGANIZATION OF THE NORTHERN PACIFIC RAILROAD COMPANY.

Announcement by the reorganization committee, pages 3 to 6.

Plan of reorganization, pages 7 to 16.

Statistics of the Northern Pacific Railroad Company, pages 17 to 21.

Reorganization agreement, pages 23 to 29.

Office of the

3324 Northern Pacific Reorganization Committee,
Mills Building, New York, March 16, 1896.

To the Holders of the Bonds and Stocks Issued or Guaranteed by the Northern Pacific Railroad Company:

The property of the Northern Pacific Railroad Company comprises, in various forms of ownership and control,

A railway system of 4,706 miles;

A land grant of about 43,000,000 acres, and

Sundry bonds, stocks, and accounts, representing interests 3325
in terminal, express, coal, and navigation companies.

This property is represented by fifty-four corporations, which have issued $380,000,000 of bonds and stocks, of which all are now outstanding, and $271,949,044, including defaulted interest to December 31, 1896, are owned directly by the public.

The present fixed annual interest and sinking fund charges amount to.....	$10,905,690.00
The adjusted net income from all sources applicable to these fixed charges has been: 3326	
For the fiscal year ending June 30, 1895...	6,015,846.62
And during the past five years has averaged	7,801,645.78

The plan for independent reorganization of the property has been drawn upon the following basis:

First—The abandonment of Chicago as the eastern terminus and the limitation of the railway on the east by the Mississippi River and the Great Lakes.

The bonds and stocks of the Chicago and Northern Pacific 3327
Railroad Company and the Chicago and Calumet Company, or their successor companies, remaining as Northern Pacific assets, will be disposed of when they can be sold advantageously, and their proceeds applied to the benefit of the property.

Second—The ultimate union of main line, branches, and terminal properties through direct ownership by a single company.

So far as practicable the ownership in fee or otherwise of the equipment, branch line, and terminal properties (other than the Portland terminal) will be acquired and vested in the new company and covered by its new mortgages. 3328

Third—The reduction of the fixed annual charges to less than the minimum earnings under probable conditions.

The net income applicable to fixed charges has fluctuated from $10,067,408.37 in the fiscal year 1891-92 to $4,449,999.04 in 1893-94. The average of the past five years has been $7,801,645.78.

3329 The smallest results were brought about by the well-known combination of currency panic, floods, social disorders, and short crops, all of which are unlikely to occur again at any one time.

The net income during the last fiscal year, 1894-95, as shown on page 20, was	$5,657,483.49
To which should be added allowance for extraordinary expenses of the receiverships, of	358,363.13
Thus making the adjusted net income of that year	$6,015,846.62

3330 The gross earnings of the present fiscal year show an increase of about 16 per cent over the gross earnings for the same period of the previous year.

The fixed annual charges under the plan of reorganization, when fully carried out (exclusive of bonds reserved for new construction), will amount to $6,052,660.

Fourth—Ample provision for additional capital as required in a series of years for the development of the property and for the greater facilities necessitated by an increased business.

In their report of September last, the receivers state "that
3331 provision should be made for extraordinary expenditures in the next five years of $9,000,000, in order to place the property on an equal footing with its rivals for economical operation."

RAILWAY SYSTEM AND ITS MORTGAGE LIENS.

The railroad of the Northern Pacific system is composed of—

Main line	45.73 %	2,152.35 miles.
Branches	54.27 %	2,554.09 miles.
	100 %	4,706.44 miles.

3332

The general first, second, and third mortgage bonds are secured by liens in their respective order upon the land grant and upon the main-line railroad, as above.

The consolidated mortgage bonds are secured by a fourth lien upon the land grant and upon the main-line railroad, and also by the pledge of first-mortgage bonds upon various branch lines, having an aggregate length of 1,415.85 miles.

None of the four mortgages cover (except by leasehold) any 3333
of the terminal properties owned by the St. Paul and Northern Pacific Railroad Company, the Northern Pacific Terminal Company of (Portland) Oregon, or the Northern Pacific and Manitoba Terminal (Winnipeg), all of which are owned by separate organizations.

There are other branch roads comprising 1,138.24 miles, the bonds of which are directly owned by the public.

UNITED STATES LAND GRANT.

The public lands granted by the United States to the North- 3334
ern Pacific Railroad Company under its charter July 2, 1864, amounted to 12,800 acres to the mile of track in the states of Minnesota and Oregon and 25,600 acres per mile in the intermediate territories.

It is estimated that under this grant the company is entitled to receive about 43,000,000 acres, of which 22,823,115 acres have been selected as belonging to the Northern Pacific Railroad Company. Of these, United States patents, vesting the title to the fee of such lands in the company, have been received for 15,939,189 acres.

The operations of the land department, as shown on page 21, 3335
during the past five years shows that from all sources (exclusive proceeds of sales applicable to the preferred stock, or by trustees of prior mortgages to their interest and sinking funds) the total income was $3,076,308.37
while the expenses and taxes amounted to.... 1,304,145.39

leaving for the sinking fund of the general first mortgage only 1,772,162.98
while for the same period the requirements thereunder amounted to 3,272,860.00 3336

This deficiency in proceeds from land sales amounting to 1,500,697.02

was supplied from the net earnings of the operating department of the railroad company.

Of late the diminution of sales of lands applicable to this

3337 and other mortgages has thrown upon the transportation earnings of the company the burden of their sinking-fund charges. These charges, with the other sinking-fund obligations to the public, amounting to $1,463,763 per annum, will be entirely relieved by the full operation of the plan of reorganization.

None of the new bonds will be subject to drawing or compulsory redemption prior to their regular maturity, a feature now quite generally recognized by investors as most desirable. At the same time they will, after the retirement of the present general first-mortgage bonds, receive all benefits of the land
3338 sales through the mortgage provision that one-half the proceeds thereof, not exceeding $500,000 in any one year, shall be used in the purchase, at not exceeding 110 per cent, and the cancellation of prior lien 4 per cent bonds, and when these are not obtainable, then in the purchase, at not exceeding 100 per cent, and the cancellation of general lien 3 per cent bonds, and that the remainder shall be used for betterments and additions to the mortgaged property.

As it now stands, the system in its form of incorporation and capitalization is a development without method or adequate preparation for growth. Scarcely any single security is com-
3339 plete in itself. The main-line mortgages cover neither feeders nor terminals. The terminal mortgages may be bereft of their main-line support. The branch-line bonds are dependent upon the main line for interchange of business, and the main line owes a large part of its business to the branch lines.

The principal object of the reorganiaztion committee has been to preserve the integrity of the system. The plan now presented for the reorganization of the property is founded upon the idea that its unification means its preservation and prosperity, both of which, it is believed, can now be thus permanently accomplished with the best possible security and
3340 results for all interests.

The conversion of the general first-mortgage bonds upon the terms set forth in the plan is recommended by Messrs. J. P. Morgan & Co., August Belmont & Co., and Winslow, Lanier & Co., who originally issued those bonds, as well as by the German committee of general first-mortgage bondholders.

The plan has been prepared with the approval and co-operation of Messrs. J. P. Morgan & Co. and the Deutsche Bank.

The plan has received the approval of the representatives of 3341
a majority of the bondholders of the three main-line mortgages in process of foreclosure (the general second, general third, and consolidated mortgages), and of other important interests affected by the terms of reorganization.

It has also received the approval of the interests represented by the protective committee.

Messrs. J. P. Morgan & Co. and the Deutsche Bank have formed the necessary syndicate of $45,000,000, and Messrs. J. P. Morgan & Co. will act as reorganization managers.

EDWARD D. ADAMS, Chairman, 3342
JOHN C. BULLITT,
LOUIS FITZGERALD,
CHARLES H. GODFREY,
J. D. PROBST,
JAMES STILLMAN,
ERNST THALMANN,
Reorganization Committee.

The undersigned protective committee hereby join in recommending the prompt acceptance of the accompanying plan and agreement. 3343

BRAYTON IVES, Chairman,
AUGUST BELMONT,
GEORGE R. SHELDON,
CHARLEMAGNE TOWER, JR.,
Protective Committee.
SILAS W. PETTIT, Counsel.

New York, March 16, 1896.

PLAN FOR THE REORGANIZATION OF THE NORTHERN PACIFIC SYSTEM.

3344

CONDITIONS OF PARTICIPATION.

Participation under this plan of reorganization in any respect whatsoever is dependent on the deposit of securities with one of the depositaries, Messrs. J. P. Morgan & Co., 23 Wall street, New York; Messrs. Drexel & Co., Fifth and Chestnut

3345 streets, Philadelphia; the Deutsche Bank, Berlin, and its branches at Frankfort-on-Main, Bremen, Hamburg, Munich, and London, within such time as may be fixed by notice, and will embrace only securities so deposited.

No securities will be received on deposit unless in negotiable form, and bonds must carry all unpaid coupons.

Pursuant to the arrangement with a syndicate hereinafter stated:

As consideration for shares of the new company as hereinafter indicated, depositors of preferred stock must also pay $10
3346 per share for new preferred and common stock, and depositors of common stock must pay $15 per share for new common stock.

The payments by depositors of such common and preferred stock must be made at the offices of Messrs. J. P. Morgan & Co., New York, or Messrs. Drexel & Co., Philadelphia, or of the Deutsche Bank, Berlin and London, at the option of each depositing stockholder, in not less than three installments, at least thirty days apart, when and as called for by advertisement in each instance at least twice a week for two weeks in two of the daily papers of general circulation published in the
3347 cities of New York, Philadelphia, London, and Berlin, respectively.

All payments must be receipted for by one of the depositaries on the certificates of deposit.

Failure to pay any installment when and as payable will subject the deposited stock and all rights on account of any prior payments to forfeiture, as hereinafter provided.

Holders of certificates of the Mercantile Trust Company of New York for general second, general third, and consolidated mortgage bonds, deposited under the existing bondholders' agreement of February 19, 1894, will be entitled to the benefits
3348 of this plan without the issue of new receipts or certificates, provided, that if hereafter required by the managers and within the time limited therefor, such existing certificates be produced to one of the depositaries and stamped as assenting to this plan.

All holders of general second, general third, and consolidated mortgage bonds who have not already deposited their bonds

with the Mercantile Trust Company of New York under the existing bondholders' agreement, shall, by delivery of their bonds to the depositaries, be deemed to deposit their bonds under said bondholders' agreement, and for the bonds deposited, will receive certificates of said trust company issued under that agreement, duly stamped by one of the depositaries as assenting to this plan. 3349

The depositaries will issue negotiable receipts for all other securities deposited with them.

The holders of receipts heretofore issued by the New York Security and Trust Company of New York for general second mortgage bonds, and by the New York Guaranty and Indemnity Company for general third mortgage bonds, must surrender the same to one of the depositaries and must obtain suitable new certificates hereunder in exchange therefor, in order to entitle them to any benefit of this plan. Bonds represented by such receipts not actually delivered to the depositaries will not be entitled to participation herein. 3350

NEW RAILROAD COMPANY.

At the discretion of the managers, the various properties will be sold under one or more of the several mortgages in default, or otherwise dealt with, and a successor company will be organized. 3351

Pending their use for reorganization purposes, the securities deposited hereunder will be delivered by the depositaries to one or more trust companies, to be held by them respectively subject to the order and control of the managers.

All securities deposited under the plan are to be kept alive so long as deemed necessary for the purpose of reorganization.

NEW STOCKS AND BONDS. 3352

The new company is to authorize the following securities:

First—Prior lien one hundred-year 4 per cent gold bonds for $130,000,000.[a]

These bonds are to be secured by a mortgage upon the main line, branches, treminals, land grant, equipment, and other property, embraced in the reorganization as carried out, and

3353 also upon all other property thereafter acquired by the use of any of the bonds to be issued under both the new mortgages.

The present general first mortgage covers only the main line, land grant, and the equipment so far as owned by the company.

a Bonds will be issued in the following denominations: Coupon bonds of $500 and $1,000, with privilege of conversion into registered bonds of $1,000 and $10,000.

All interest will be payable quarterly, and both principal and interest will be payable in United States gold coin of the present standard of weight and fineness, without deduction for any taxes which the railroad company may be required to pay or retain therefrom.

3354 The proceeds of the lands applicable to the new bonds after the retirement of the general first mortgage bonds (as provided below) will be applied, one-half, but not in any one year exceeding $500,000, to the purchase of the prior lien 4 per cent bonds at not exceeding 110 per cent, and their cancellation, and the remainder, under carefully guarded restrictions in the mortgage will be used for betterments and additions to the property pledged as security for the bonds.

Whenever these bonds cannot be purchased at the maximum price, the unapplied land proceeds for that year will be used to purchase the general lien 3 per cent bonds at not exceeding 100
3355 per cent and their cancellation.

These bonds are to be appropriated approximately as follows:

To retire an equal amount of general first mortgage bonds	$41,879,000
To provide for the conversion and, so far as necessary, for the sinking fund of the general first mortgage bonds (any amount not so used to be added to the reserve for new construction, etc.)	14,657,650
For the payment of receivers' certificates and equipment trust, and the conversion of the collateral trust notes and general second mortgage bonds	40,040,350
3356 Total present issue under the plan	96,577,000
Reserve to provide at their maturity for an equal amount of bonds of the St. Paul and Northern Pacific Railroad Company	8,423,000
Estimated amount to be reserved for new construction, betterments, equipment, etc., under carefully guarded restrictions in the mortgage, and to the extent of not exceeding $1,500,000, per annum	25,000,000
Total authorized issue	130,000,000

Second—General lien 150-year 3 per cent gold bonds,[a] limited in amount to $60,000,000, in addition to a reserve for the 100-year 4 per cent prior lien mortgage of $130,000,000. 3357

These bonds are to be secured by a mortgage second in lien to the prior lien mortgage, and covering the same property.

[a] Bonds will be issued in the following denominations: Coupon bonds of $500 and $1,000, with privilege of conversion into registered bonds of $1,000 and $10,000.

All interest will be payable quarterly, and both principal and interest will be payable in United States gold coin of the present standard of weight and fineness, without deduction for any taxes which the railroad company may be required to pay or retain therefrom. 3358

They are to be appropriated approximately as follows:

For the conversion of the general third mortgage bonds, dividend certificates, and the consolidated mortgage and branch line bonds under the plan	$56,000,000
Estimated amount to be reserved under carefully guarded restrictions in the mortgage, for new construction, betterments, equipment, etc.	4,000,000
Total issue in excess of prior lien bonds	60,000,000
Reserved to provide for the prior lien bonds at their maturity in 100 years	130,000,000
Maximum amount of both mortgages	$190,000,000

3359

Third—Preferred stock, 4 per cent noncumulative, limited in amount, under this plan, to not exceeding $75,000,000, which amount can be increased only with the consent of the preferred and common stockholders, as hereinafter set forth. All the preferred stock will be in shares of $100 each, and will be registered and transferable, at the option of the holder, either in New York or at the Deutsche Bank, Berlin. Dividends upon stock registered in Berlin may be collected there at the rate of 4.20 marks per dollar. 3360

Each share of this preferred stock will be entitled to noncumulative dividends to the extent of four per cent per annum, payable quarterly out of surplus net earnings in each fiscal year before any dividends for such year shall be paid on the common stock, and without deduction for any United States,

3361 State, or municipal taxes that the railroad company may at any time be required to pay or retain therefrom.

In any fiscal year in which four per cent dividends shall have been declared on both preferred and common stock, all shares, whether preferred or common, shall participate equally in any further dividends for such year.

Provision will be made that after the termination of the voting trust hereinafter provided for, the preferred stock is to have the right to elect a majority of the board of directors of the new company whenever for two successive quarterly per-
3362 iods the full and regular quarterly dividends upon the preferred stock, at the rate of four per cent per annum are not paid in cash.

The right will be reserved by the new company to retire this stock, in whole or in part, at par, from time to time, upon any first day of January during the next twenty years.

The preferred stock will be appropriated approximately as follows:

For conversion and adjustment of various main line and branch line mortgage bonds and the defaulted interest thereon, and other purposes, as provided in the plan....	$72,500,000
3363 Estimated amount which may be used for reorganization purposes or may be available as a treasury asset of the new company	2,500,000
	$75,000,000

Fourth—Common stock to the amount of not exceeding $80,000,000, in shares of $100 each.

This stock will be appropriated approximately as follows:

For purposes of reorganization, as provided in the plan...	$77,500,000
Estimated amount which may be used for reorganization purposes or may be available as a treasury asset of the	
3364 new company	2,500,000
	$80,000,000

VOTING TRUST.

In furtherance of this independent reorganization and the administration of the property and of the securities, both classes of stock of the new company (except such number of

shares as may be disposed of to qualify directors) are to be 3365
vested in the following five voting trustees: J. Pierpont Morgan, George Siemens, August Belmont, Johnston Livingston, and Charles Lanier.

In the event of the death of any person designated as a voting trustee, prior to the creation of the voting trust, the vacancy shall be filled as provided in the reorganization agreement hereunto annexed, and which is comprised in and forms part of this plan, with the same force and effect as though herein set forth at length. The stock shall be held by the voting trustees and their successors, jointly (under a trust 3366
agreement prescribing the powers and duties to be exercised by them, or by a majority of them, and the method of filling vacancies), for five years, although the voting trustees, in their discretion, may deliver the stock at any earlier date. Until delivery of stock is made by the voting trustees, they shall issue stock trust certificates entitling the registered holders to receive, at the time therein provided, stock certificates for the number of shares therein stated, and in the meanwhile to receive payments equal to the dividends collected by the voting trustees upon a like number of shares, which shares, however, with the voting power thereon, shall be vested in the voting 3367
trustees until the stock shall become deliverable, as provided in such trust agreement and certificates of the voting trustees.

RESTRICTIONS AS TO ADDITIONAL MORTGAGE DEBT AND PREFERRED STOCK.

Provision is to be made that no additional mortgage shall be put upon the property to be acquired hereunder, nor the amount of the preferred stock authorized under this plan be increased, except, in each instance, after obtaining the consent of the holders of a majority of the whole amount of the pre- 3368
ferred stock, given at a meeting of the stockholders called for that purpose, and the consent of the holders of a majority of such part of the common stock as shall be represented at such meeting, the holders of each class of stock voting separately. During the existence of the voting trust the consent of holders of like amounts of the respective classes of beneficial certificates shall also be necessary for the purposes indicated.

3369

ESTIMATE OF TOTAL NEW CAPITALIZATION[a] UNDER THE PLAN WHEN FULLY CARRIED OUT (EXCLUSIVE OF BONDS AND STOCK RESERVED FOR NEW CONSTRUCTION, ETC.).

Securities.		Amount.	Annual interest and dividend.
Prior lien bonds[b]		$105,000,000	$4,372,660
General lien bonds		56,000,000	1,680,000
Total bonds		$161,000,000	$6,052,660
Preferred stock	$72,500,000		2,900,000
Common stock	77,500,000		
Total stock		150,000,000	
Total capitalization		$311,000,000	
3370 Total annual charges prior to the common stock			$8,952,660

[a]These calculations are based upon 4,706.44 miles, and are consequently subject to variations according to the actual mileage finally embraced in the reorganization.

[b]Including $8,423,000 St. Paul and Northern Pacific bonds.

ESTIMATE OF AMOUNT AND CHARGES PER MILE.[a]

Securities.		Amount per mile.	Interest and dividend per mile.
Prior lien bonds		$22,310	$929
General lien bonds		11,899	357
3371 Total bonds per mile		$34,209	$1,286
Preferred stock	$15,404		616
Common stock	16,467		
Total stock per mile		31,871	
Total capital per mile		$66,080	
Annual charges per mile prior to common stock			$1,902

[a]These calculations are based upon 4,706.44 miles, and are consequently subject to variation according to the actual mileage finally embraced in the reorganization.

APPLICATION OF SECURITIES.

3372

The following details show the disposition to be made under the plan of the securities of the new company:

As a consideration for the property and securities to be conveyed or delivered to the new company, or which, pursuant to the plan, the new company shall acquire, it is contemplated that the new company shall deliver the new bonds and stock, excepting the new bonds to be reserved to take up such of the

existing securities as are not disturbed, and such final amounts 3373
as shall be reserved for the future use of the new company.

The requisite deliveries of the new securities to depositors and subscribers under the plan will thus be provided for.

GENERAL FIRST-MORTGAGE BONDS.

Privilege of Conversion.

The present general first-mortgage bonds mature in 1921, but are redeemable by compulsory drawings at any time at 110 per 3374
cent from the proceeds of land sales or the fixed annual contribution by the company to the sinking fund.

These compulsory redemptions in the past have been a disturbing factor in all calculations for investment purposes, and the inauguration of a new and vigorous policy for the sale of the lands may be expected from this time forward greatly to increase the amount of such redemptions.

In some years these redemptions have required large contributions from the operating department, to the extent even of the entire amount of the sinking fund, a sum which would pro- 3375
vide for the annual interest on about $19,000,000 of prior-lien bonds as now proposed. It is manifestly to the benefit of the holders of general first-mortgage bonds to secure an investment of longer continuance, and it is also to the benefit of all subsequent securities to diminish this unnecessarily large burden of annual fixed charge.

To relieve the bondholders from these calls for redemption, which prevent their bonds from reaching the high price they would otherwise command, and to relieve the company from the burden of the sinking-fund requirements and permit the use of a portion of the proceeds of land sales for the benefit of 3376
the property,

Holders of the general first-mortgage bonds are now offered the privilege of converting or exchanging their bonds for the new prior lien 100-year 4 per cent gold bonds at the rate of $1,000 old bonds (coupon or registered) for $1,350 of new bonds.

To avail of this offer, holders must deposit their bonds as provided on page 7 hereof.

3377 Bonds deposited for conversion under this privilege will be entitled to receive on April 1st next a cash payment of $30 per $1,000 bond so deposited in lieu of the six months' interest that would mature July 1 next on such bond. The first coupon on the prior-lien bonds offered in exchange for general first-mortgage bonds will be payable October 1 next, and in case of any delay in the reorganization, payments equal to the amount of such new coupons will be made on that date and quarterly thereafter until the new bonds are delivered. These payments will, in the absence of other provision, be made by the syndi-
3378 cate, which will reimburse itself out of the present general first-mortgage coupons as collected.

The right is expressly reserved to modify these terms or to terminate the privilege at any time and without notice.

The old bonds now outstanding are at the rate of about $20,466 per mile. The prior-lien bonds, including those reserved for the St. Paul and Northern Pacific bonds, (but not including those to be reserved for new construction, etc.), will, on the basis of 4,706 miles, amount to about $22,310 per mile, and will cover all the equipment and the branches and terminals as proposed under the plan.

3379 It is not sought in any way to enforce a conversion of the present general first-mortgage bonds, and this offer is made solely upon the belief that on the terms proposed such conversion, while advantageous to the company, is also manifestly to the advantage of bondholders so converting.

The fixed charges for interest and sinking funds on the present general first and divisional mortgage bonds are at the rate of $1,618 per mile per annum, while it is estimated that they will amount to only $929 per mile per annum on the prior lien bonds.

3380 The advantage is obvious of a mortgage resting upon a complete and entire system, including main line and all branches brought into the new company, together with terminals, land grant and equipment, and having over $200,000,000 of bond and share capital behind it, securing a gold bond running for one hundred years, as compared with a bond at all times liable to compulsory retirement, and secured by only part of the system.

COMPLAINANT'S EXHIBIT 19. 847

3381

NORTHWEST EQUIPMENT COMPANY.

The shares deposited under the plan to be purchased at par flat as of June 1, 1896, payable with interest from that date at 6 per cent per annum, at any time, in the discretion of the managers, on or before completion of reorganization.

COLLATERAL TRUST NOTES.

Those deposited under the plan to receive— 3382

3 per cent in cash May 1, 1896, and 4 per cent in cash January 1, 1897.

100 per cent in prior lien 4 per cent bonds.

20 per cent in preferred stock trust certificates.

GENERAL SECOND-MORTGAGE BONDS.

Those deposited under the plan to receive—

4 per cent in cash within sixty days after the plan has been declared operative.

118½ per cent in prior lien 4 per cent bonds. 3383

50 per cent in preferred stock trust certificates.

GENERAL THIRD-MORTGAGE BONDS.

Those deposited under the plan to receive—

3 per cent in cash within sixty days after the plan has been declared operative.

118½ per cent in general lien 3 per cent bonds.

50 per cent in preferred stock trust certificates.

3384

DIVIDEND CERTIFICATES.

Those deposited under the plan to receive—

3 per cent in cash within sixty days after the plan has been declared operative.

118 per cent in general lien 3 per cent bonds.

50 per cent in preferred stock trust certificates.

3385

CONSOLIDATED MORTGAGE BONDS.

Those deposited under the plan to receive—

1½ per cent in cash within sixty days after the plan has been declared operative.

66⅔ per cent in general lien 3 per cent bonds.

62½ per cent in preferred stock trust certificates.

Except as collected out of the coupons, the managers will have a lien upon deposited securities for cash advanced as
3386 above provided, after the plan shall have been declared operative.

Interest on all new bonds to be delivered in exchange for old securities will, unless otherwise stated, accrue from January 1, 1897, and will be payable on or before completion of reorganization.

Equitable cash settlements will be made for fractional amounts of new bonds and stocks accruing to depositors.

BRANCH ROAD BONDS.

3387 Holders of the bonds issued by the following companies are requested to communicate with Messrs. J. P. Morgan & Co., New York, or with the Deutsche Bank, Berlin, giving the amount of their holdings, and stating whether held in bonds or certificates of deposit:

Central Washington Railroad Company.

Cœur d'Alene Railway and Navigation Company.

Duluth and Manitoba Railroad Company (Minnesota division).

Duluth and Manitoba Railroad Company (Dakota
3388 division).

Helena and Red Mountain Railroad Company.

James River Valley Railroad Company.

Northern Pacific and Montana Railroad Company.

Northern Pacific and Manitoba Railway Company terminal bonds.

Seattle, Lake Shore and Eastern Railroad Company.

Spokane and Palouse Railway Company.

None of these branch roads (Seattle, Lake Shore and Eastern 3389
alone excepted) owns any considerable amount of equipment; all require more or less expenditure for the restoration of their track, roadbed, stations, etc., to proper condition; all are deficient in their rights of way; some have general traffic all the year, while others are dependent mainly upon the special business of a few months annually; and some earn varying rates of interest upon their cost.

In order to deal equitably with the holders of these branch bonds, it is deemed necessary to consider each case separately. and upon its own individual merits. 3390

After hearing from a large proportion of each class of these bondholders steps will be taken to arrive at some fair basis of adjustment, for which general lien 3 per cent bonds and new preferred stock trust certificates have been reserved under this plan.

PREFERRED STOCK.

Upon completion of the reorganization, the reorganization managers, in behalf of the syndicate, will deliver to each depositor of one share ($100) of preferred stock— 3391

$50 in new preferred stock trust certificates and
50 in new common stock trust certificates,

in consideration of his payment therefor of $10 per share, as provided on page 7 of this plan.

COMMON STOCK.

Upon completion of the reorganization the reorganization managers, in behalf of the syndicate, will deliver to the depositor of each share ($100) of old common stock one share ($100) of new common stock trust certificate, in consideration 3392
of his payment therefor of $15 per share, as provided on page 7 of this plan.

In addition to the payment of all defaulted interest to January 1, 1897, in cash and new mortgage bonds, the holders of the three main line mortgage bonds in default will receive a considerable increase of principal with the following annual income:

3393

Old Securities.	Fixed Interest.				Income contingent upon dividends on new 4% preferred stock.		Total Income.	
	Prior lien 4% bonds.		General lien 3% bonds.					
	Amount.	Per cent.	Amount.	Per cent.	Amount.	Per cent.	Amount new secu'ties.	Per cent on old securities.
$100 seconds receive *a*.	$100	4.00	.....	.....	$50.00	2.00	$150.00	6.00
$100 thirds receive *a*..	.....	.....	$100	3.00	50.00	2.00	150.00	5.00
$100 consols receive *a*.	.....	.....	50	1.50	62.50	2.50	112.50	4.00

a In addition to amounts allowed for coupons.

3394

The position of the holders of the common stock of the new company in relation to fixed annual charges for interest and sinking funds under the plan, as compared with the position of the holders of the common stock of the present company, is as follows:

Fixed charges and preferred dividends.	Old company.	New company.	Reductions.	
			Amount.	Per cent.
Fixed annual charges prior to dividends upon preferred stocks.....	$10,905,690	$6,052,600	$4,853,030	44.50%
3395 Required for annual dividends upon the preferred stocks.....	2,819,064	2,900,000	*a* 80,936	*a* 2.87%
Total fixed charges and dividends upon the preferred stocks, prior to dividends upon the common st'ks.	$13,724,754	$8,952,600	$4,772,094	34.77%

a Increase.

The compensation to be paid to Messrs. J. P. Morgan & Co. and the Deutsche Bank for their respective services as managers and as depositaries of securities has been fixed at one-quarter (¼ %) of one per cent upon the par value of the securities deposited under the plan and of the new securities issued in ex-
3396 change therefor, but not, in any event, to exceed $1,000,000 in all for such compensation to both parties.

SYNDICATE.

A syndicate has been formed by Messrs. J. P. Morgan & Co., of New York, and the Deutsche Bank, of Berlin, to the subscribed amount of $45,000,000, to provide the amounts of cash

estimated as necessary (1) to carry out the terms of the plan of reorganization, and (2) to furnish the new company with cash working capital and with a sum estimated at $5,000,000 for early use in betterment and enlargement of its property. 3397

New York, March 16, 1896.

MILEAGE OF THE NORTHERN PACIFIC SYSTEM.

Main line	45.73%	2,152.35 miles.	
Branches	54.27%	2,554.09 miles.	
Owned	100.00%	4,706.44 miles.	3398

First, second, and third mortgages:	Mileage.	Total.
Main line mileage	2,136.46	
Cokedale Spur	3.59	
Carlton to Duluth, one-half of 24.60	12.30	
		2,152.35

Consolidated mortgage:

A fourth lien on the above mileage and a first lien on the following mileage through the ownership of bonds of the branch roads:

Little Falls and Dakota R. R.	89.08	3399
Northern Pacific, Fergus and Black Hills R. R.	117.05	
Fargo and Southwestern R. R.	87.41	
Sanborn, Cooperstown and Turtle Mountain R. R.	36.75	
Jamestown and Northern R. R. Co.	102.59	
Northern Pacific, La Moure and Missouri River R. R.	21.30	
Southeastern Dakota R. R.	14.84	
Jamestown and Northern Extension R. R.	18.03	
Helena and Jefferson County R. R. Co.	20.58	
Rocky Mountain R. R. of Montana	52.61	
Spokane Falls and Idaho R. R.	14.39	
Clealum R. R.	5.30	
Northern Pacific and Cascade R. R.	17.37	
Green River and Northern R. R.	11.87	3400
Tacoma, Orting and Southeastern R. R.	7.65	
Rocky Fork and Cooke City R. R.	45.43	
Northern Pacific and Puget Sound Shore R. R.	43.08	
Duluth, Crookston and Northern R. R.	44.51	
United Railroads of Washington	181.93	
Northern Pacific and Manitoba R. R.	263.54	
Spokane and Palouse R. R., Idaho Division	61.61	

3401	A proportionate first lien on the following mileage, based on part ownership of the bonds outstanding:		
	Central Washington R. R.	108.54	
	Northern Pacific and Montana R. R.	354.38	
		462.92	
	Proportion covered by consolidated mortgage	158.93	
	Total mileage covered by consolidated mortgage		1,415.85
3402	Branch road bonds owned by public: A first lien on the following mileage:		
	Proportion of—		
	Central Washington R. R. / Northern Pacific and Montana R. R. } as above	303.99	
	Spokane and Palouse R. R., in Washington	89.33	
	Cœur d'Alene Railway and Navigation Co	49.59	
	Helena and Red Mountain R. R.	17.08	
	James River Valley R. R.	63.75	
	Duluth and Manitoba R. R.	205.77	
	Seattle, Lake Shore and Eastern R. R. Co	227.03	
	St. Paul and Northern Pacific R. R. Co	181.70	
			1,138.24
3403	Total mileage owned		4,706.44
	Mileage not owned:		
	Operated by trackage rights—		
	Carlton to Duluth	12.30	
	Tracks and terminals rented:		
	St. Paul Union Depot	.56	
	Great Northern Railway	12.12	
	Minneapolis Union Railway Co.	2.60	
3404	Minneapolis and St. Louis Railway Co.	1.62	
	Northern Pacific Terminal Co., of Oregon	1.32	
	St. Paul and Superior Short Line	2.37	
	Winnipeg Transfer	1.24	
			34.13
	Total miles operated		4,740.57

3405

The above system of the Northern Pacific Railroad is located as follows:

State.	Miles of main line.	Miles of branches.	Total miles.
Wisconsin	78.63	.....	78.63
Minnesota	249.40	498.76	748.16
North Dakota	376.93	484.02	860.95
Montana	786.68	490.08	1,276.76
Idaho	84.06	105.64	189.70
Washington	537.97	712.05	1,250.02
Oregon	38.68	.....	38.68
Manitoba	.....	263.54	263.54
Total miles	2,152.35	2,554.09	4,706.44

3406

BONDS ISSUED OR GUARANTEED BY THE NORTHERN PACIFIC RAILROAD COMPANY, HELD BY THE PUBLIC, JANUARY 1, 1896.

Title of bonds.	Rate of Interest.	Principal Due.	Amount standing.
Northern Pacific Railroad Company:			
Missouri division first mortgage	6%	1919	$1,815,500
Pend d'Oreille division first mortgage	6%	1919	357,000
General first mortgage	6%	1921	41,879,000
General second mortgage bonds	6%	1933	19,216,000
Receivers' certificates	6%	1897	4,900,000
General third mortgage bonds	6%	1937	11,426,000
Dividend certificates	6%	1907	519,500
Consolidated mortgage bonds	5%	1989	45,520,000
Collateral trust notes	6%	1898	9,494,000
Northwest Equipment Company	7%	1898	3,000,000
Terminal bonds. Principal and interest guaranteed by the Northern Pacific Railroad Company:			
St. Paul and Northern Pacific Railway—			
Prior lien bonds	7%	1907	420,000
General mortgage bonds	6%	1923	8,003,000
Northern Pacific Terminal Co. first mortgage bonds	6%	1933	a1,440,000
Branch road bonds. Principal, interest, and sinking fund guaranteed by the Northern Pacific Railroad Company:			
Central Washington	6%	1938	1,750,000
Coeur d'Alene	6%	1908	1,238,000
Duluth and Manitoba (Minnesota)	6%	1936	1,650,000
Duluth and Manitoba (Dakota)	6%	1937	1,451,000
Helena and Red Mountain	6%	1937	400,000
James River Valley	6%	1936	963,000
Northern Pacific and Montana	6%	1938	5,381,000
Northern Pacific and Manitoba Terminal	5%	1939	650,000
Spokane and Palouse	6%	1936	1,766,000
Seattle, Lake Shore and Eastern	6%	1931	5,558,000
Total	.....	.....	168,797,000

3407

3408

a 40% of $3,600,000 issued.

CORRECTED STATEMENT OF INCOME ACCOUNT AND CHARGES THERETO FOR THE FIVE FISCAL YEARS ENDING JUNE 30, 1895.

Fiscal Years Ending June 30.	1891.	1892.	1893.	1894.	1895.	Total, Five Years, 1891-95.	Annual Average, 1891-95.
Mileage operated	4,222	4,412	4,448	4,468	4,469	.....	4,403
Gross earnings—							
Freight, commercial	$16,910,160.19	$17,328,989.35	$16,982,891.57	$11,505,455.41	$13,210,698.86	$75,998,195.38	$15,199,639.08
Freight, construction	621,062.19	54,782.20	34,738.03	36.78	.....	710,619.20	142,123.84
Passenger	6,680,491.37	6,296,284.96	5,917,054.22	4,136,332.10	3,350,491.53	26,380,654.18	5,276,130.83
Mail, express and miscellaneous	939,830.34	981,400.98	985,424.86	845,385.22	873,790.41	4,625,831.81	925,166.36
Total gross earnings from traffic	$25,151,544.09	$24,661,457.49	$23,920,108.68	$16,547,209.51	$17,434,980.80	107,715,300.57	$21,543,060.11
Operating expenses—							
Per books	$14,940,402.18	$14,176,864.63	$14,471,771.63	$11,816,120.17	$11,319,682.41	$66,724,841.02	.....
Expenses charged to other accounts	429,889.62	355,472.58	45,939.82	.....	.....	831,302.02	.....
Total operating expenses	$15,370,291.80	$14,531,837.21	$14,517,711.45	$11,816,120.17	$11,319,682.41	$67,555,643.04	$13,511,128.61
Net earnings	$9,781,252.29	$10,129,620.28	$9,402,397.23	$4,731,089.34	$6,115,298.39	$40,159,657.53	$8,031,931.50
Operating charges—							
Taxes	$460,594.44	$490,985.09	$462,340.26	$495,825.06	$501,715.91	$2,291,460.76	$458,292.15
Rentals of tracks and terminals	1,133,669.48	1,230,213.56	1,198,333.03	977,883.68	998,706.86	5,538,806.61	1,107,773.32
Other operating charges	.....	.....	.....	.....	96,562.56	96,562.56	19,312.51
Total operating charges	$1,594,263.92	$1,631,198.65	$1,660,673.29	$1,443,708.74	$1,597,045.33	$7,926,889.93	$1,585,377.98
Net income from traffic	$8,186,988.37	$8,498,421.63	$7,741,723.94	$3,287,380.60	$4,518,253.06	$32,232,767.60	$6,446,553.52
Miscellaneous income, exclusive of that from sales of land	1,078,528.12	874,099.49	1,222,795.36	497,303.52	616,229.43	4,288,955.92	857,791.18
Total net income of N. P. R. R. system considering the St. P. and N. P. R. R. as a leased line	$9,265,516.49	$9,372,521.12	$8,964,519.30	$3,784,684.12	$5,134,482.49	$36,521,723.52	$7,304,344.70
Add—							
Rentals paid St. P. and N. P. R. R. included in operating charges as above	1,024,057.94	1,090,761.75	1,048,638.19	822,814.92	838,001.00	4,824,273.80	964,854.76
Total	$10,289,574.43	$10,463,282.87	$10,013,157.49	$4,607,499.04	$5,972,483.49	$41,345,997.32	$8,269,199.46

CORRECTED STATEMENT OF INCOME ACCOUNT AND CHARGES THERETO FOR THE FIVE FISCAL YEARS ENDING JUNE 30, 1895—Continued.

Fiscal Years Ending June 30.	1891.	1892.	1893.	1894.	1895.	Total, Five Years, 1891-95.	Annual Average, 1891-95.
Deduct—							
Dividends paid by St. P. and N. P. R. R. Co.. (Those received by N. P. R. R. Co. included in miscellaneous income account as above).....	$796,401.17	$395,874.50	$672,992.75	$157,500.00	$315,000.00	$2,337,768.42	$467 553.68
Total net income, including the St. P. and N. P. R. R. as part of the system.....	$9,493,173.26	$10,067,408.37	$9,340,164.74	$4,449,999.04	$5,657,483.49	$39,008,228.90	$7,801,645.78

NOTE.—Losses for years 1891 to 1894, under leases of Wisconsin Central Co. (including Chicago and N. P. R. R.), Seattle, Lake Shore & Eastern R. R. Co. and Puget Sound and Alaska S. S. Co. are not deducted in this statement.

JOHN SCOTT, Comptroller.

NEW YORK, March 7, 1896.

STEPHEN LITTLE,
J. H. MCCLEMENT,
Auditors for Reorganization Committee.

3416 3415 3414 3413

COMPLAINANT'S EXHIBIT 19.

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LAND DEPARTMENT OPERATIONS, FIVE FISCAL YEARS.

MINNESOTA AND DAKOTA.

Fiscal Year.	Acres.	Receipts.			Expenses.	Taxes.	Total.	Net Receipts.
		Cash.	Preferred Stock.	Total.				
1890-1	139,178	$116,530.08	$324,711.35	$441,241.43	$75,211.79	$41,884.91	$117,096.70	$324,144.73
1891-2	*322,676	1,413,123.27	94,302.40	1,507,485.67	397,688.39	45,004.72	442,693.11	1,064,792.56
1892-3	38,548	92,481.98	274,118.63	366,600.61	94,993.09	61,830.74	156,823.83	209,776.78
1893-4	16,732	58,122.01	290,284.56	348,406.57	35,535.31	41,216.42	76,751.73	271,654.84
1894-5	42,907	242,601.40	69,700.00	312,301.40	77,723.66	38,493.70	116,217.36	196,084.04
Total	560,041	$1,922,858.74	$1,053,176.94	$2,976,035.68	$681,152.24	$228,430.49	$909,582.73	$2,066,452.95
Sp. M. & M. land, 1891-2	175,337	1,193,129.98		1,193,129.98				871,268.43
Int. chgd. by op. dept., 1891-2					321,861.55		321,861.55	
Normal, five years	384,704	$729,728.76	$1,053,176.94	$1,782,905.70	$359,290.69	$228,430.49	$587,721.18	$1,195,184.52

Cash receipts in excess of expenses, exclusive of St P. M. & M. lands, and interest charged by operating department.....$142,007.58

MISSOURI DIVISION.

1890-1	1,659	$11,629.38		$11,629.38	$12,677.13	$21,033.65	$33,710.78	*$22,081.40
1891-2	2,662	15,527.84		15,527.84	10,691.55	35,300.00	45,991.55	*30,463.71
1892-3	*14,211	19,105.60		19,105.60	12,425.19	23,638.92	36,064.11	*16,958.51
1893-4	*1,613	11,372.66		11,372.66	7,399.39	9,912.13	17,311.52	*5,938.86
1894-5	4,402	13,339.66		13,339.66	7,140.33	235.49	7,375.82	5,963.84
Total	*7,101	$70,975.14		$70,975.14	$50,333.59	$90,120.19	$140,453.78	*$69,478.64

PEND D'OREILLE DIVISION.

1890-1	65,979	$529,508.63		$529,508.63	$106,381.91	$45,403.94	$151,785.85	$377,722.78
1891-2	36,281	460,639.55		460,639.55	85,484.69	37,786.59	123,271.28	337,368.27
1892-3	*29,833	450,115.51		450,115.51	80,243.74	50,764.13	131,007.87	319,107.64
1893-4	*1,824	131,850.98		131,850.98	57,509.67	52,399.67	109,909.34	21,941.64
1894-5	*11,322	96,802.02		96,802.02	127,077.19	7,372.28	134,449.47	*37,647.45
Total	59,281	$1,668,916.69		$1,668,916.69	$456,697.20	$193,726.61	$650,423.81	$1,018,492.88

LAND DEPARTMENT OPERATIONS, FIVE FISCAL YEARS—Continued.

GENERAL FIRST MORTGAGE DIVISIONS.

Fiscal Year.	Acres.	Receipts.			Expenses.	Taxes.	Total.	Net Receipts.
		Cash.	Preferred Stock.	Total.				
1890-1	159,336	$731,849.41	.....	$731,849.41	$177,122.12	$75,814.45	$252,936.57	$478,912.84
1891-2	192,200	880,728.16	.....	880,728.16	175,212.89	91,741.69	266,954.58	613,773.58
1892-3	84,651	824,402.94	.....	824,402.94	141,872.70	111,875.31	253,748.01	570,654.93
1893-4	30,415	291,044.24	.....	291,044.24	92,204.89	90,017.72	182,222.61	108,821.63
1894-5	*231	348,283.62	.....	348,283.62	168,462.12	179,821.50	348,283.62	.....
Total	466,431	$3,076,308.37	.....	$3,076,308.37	$754,874.72	$549,270.67	$1,304,145.39	$1,772,162.98

The net receipts of 1894-5 were set aside for a fund to meet taxes for 1894 and prior years, pending a judicial decision as to the liability of the land department therefor. This accounts for the large increase in the charge for taxes in that year.

SUMMARY OF LAND OPERATIONS, FIVE FISCAL YEARS, 1891 TO 1895 INCLUSIVE.

Divisions.								
General first mortgage	466,431	$3,076,308.37	.....	$3,076,308.37	$754,874.72	$549,270.67	$1,304,145.39	$1,772,162.98
Missouri division mortgage	a 7,101	70,975.14	.....	70,975.14	50,333.59	90,120.19	140,453.78	*69,478 64
Pend d'Oreille division mortgage	59,281	1,668,916.69	.....	1,668,916.69	456,697.20	198,726.61	650,423.81	1,018,492.88
Applied to bonded debt	518,611	$4,816,200.20	.....	$4,816,200.20	$1,261,905.51	$833,117.47	$2,095,022.98	$2,721,177.22
Minnesota and Dakota	384,704	$729,728.76	$1,053,176.94	$1,782,905.70	$359,290.69	$228,430.49	$587,721.18	$1,195,184.52
St. P., M. M. lands, 1891-2	175,337	1,193,129.98	.....	1,193,129.98	.....	.....	.....	.....
Interest charged by op. dept., 1891-2	.....	.....	.....	.....	321,861.55	.....	321,861.55	871,268 43
Applied to preferred stock	560,041	$1,922,858.74	$1,053,176.94	$2,976,035.68	$681,152.24	$228,430.49	$909,582.78	$2,066,452.95
Grand total	1,078,652	$6,739,058.94	$1,053,176.94	$7,792,235.88	$1,943,057.75	$1,061,547.96	$3,004,605.71	$4,787,630.17

a Deductions for cancellation of sales or losses in operations.

February 10, 1896.

JOHN SCOTT, Comptroller.

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COMPLAINANT'S EXHIBIT 16.

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REORGANIZATION AGREEMENT, MARCH 16th, 1896.

An agreement made this 16th day of March, 1896, between Edward D. Adams, John C. Bullitt, Louis Fitzgerald, Charles H. Godfrey, John D. Probst, James Stillman, Ernst Thalmann (hereinafter called the Reorganization Committee), parties of the first part;

The Mercantile Trust Company, party of the second part;

J. P. Morgan & Co. (a copartnership), parties of the third
3426 part (hereinafter called the Managers);

Holders of mortgage bonds of the Northern Pacific Railroad Company (hereinafter called the Railroad Company), holders of certificates of the Mercantile Trust Company for general second, general third, and consolidated mortgage bonds, holders of collateral trust notes and dividend certificates of the railroad company, and the mortgage bonds of various branch railroads, hitherto known as parts of the Northern Pacific Railroad System, and holders of the preferred and common stock of the Northern Pacific Railroad Company, who shall become parties to this agreement, of the fourth part (herein-
3427 after called Depositors);

The Deutsche Bank, of Berlin, in evidence of its active support of the reorganization and of its acceptance of appointment as depositary thereunder, party of the fifth part; and

August Belmont, Brayton Ives, George R. Sheldon, and Charlemagne Tower, Jr., a committee in behalf of various interests in the Northern Pacific Railroad Company (hereinafter called the Protective Committee), in evidence of their active support of the reorganization thereof according to the plan provided herein, as parties of the sixth part;

3428 Whereas, by an agreement dated February 19, 1894, known as the Bondholders' Agreement, the parties of the first part were, by certain holders of the general second, general third, and consolidated mortgage bonds of the railroad company, appointed a committee for the reorganization of said company; and

Whereas the plan referred to in this agreement has been proposed by the reorganization committee for the reorganization of the railroad company;

Now, therefore, it mutually is agreed by and between the 3429
respective parties hereto as follows:

First—A printed copy of this agreement, signed by a majority of the members of the reorganization committee and of the protective committee, and by the parties of the second and third parts hereto, and by or for the party of the fifth part, shall be lodged with J. P. Morgan & Co., New York, and a duplicate, signed in like manner, shall be lodged with the Deutsche Bank, of Berlin. Each of said copies shall be taken as a complete and original instrument, but both shall constitute but one agreement. The foregoing plan is, and shall 3430
be, taken to be a part of this agreement, with the same effect as though each and every provision thereof had been embodied herein, and said plan and this agreement shall be read as parts of one and the same paper; but no estimate, statement, explanation or suggestion contained in the said plan or this agreement, or in any circular issued, or which may hereafter be issued, by the depositaries or by the committee or by the managers, is intended, or is to be accepted, as a representation or warranty, or as a condition of deposit or assent under the plan and this agreement, and no defect or error shall release any deposit under this plan and agree- 3431
ment, or affect or release any assent thereto, except by written consent of the managers.

Holders of the bonds, collateral trust notes, dividend certificates, and of the preferred and common stock of the railroad company, and of the stock of the Northwest Equipment Company and of the mortgage bonds of various branch railroads hitherto known as parts of the Northern Pacific Railroad system, or any of them, may become parties to this plan and agreement by depositing their securities with the depositaries upon the terms and conditions specified in the plan and this agreement, or hereafter defined, and within the periods 3432
which shall be fixed or limited by the managers.

Such holders must in all cases deposit the certificates for their stock, or their bonds, or other securities, with such transfers, assignments, and powers of attorney as may be required by the managers in order to vest in them, and to enable them to transfer, the complete and absolute title to such

3433 stocks or bonds or other securities; and the depositors agree respectively at any time, on demand of the managers, to execute any and all other transfers, assignments, or writings required for vesting the complete ownership of the bonds and stock deposited hereunder in the managers, or their nominees.

All depositors of securities (excepting assenting certificate holders as hereinafter designated) shall receive certificates of deposit in form to be prescribed by the managers, specifying the respective bonds or stocks deposited, and the holders of such certificates of deposit shall be entitled (subject to any provisions contained in such certificates) to the rights and
3434 benefits, and only to the rights and benefits, specified in the plan and this agreement, as accruing to the holders of the bonds or stocks of the class represented by such certificates respectively, or granted by the managers, pursuant to the powers conferred upon them; and thereafter the holder of any such certificate, or of any certificate issued in lieu thereof or in exchange therefor, shall be subject to the plan and this agreement and entitled to have and exercise the rights of the original depositor under the certificate issued to him in respect of the securities therein mentioned.

3435 The plan and this agreement prepared and adopted by the reorganization committee in exercise of the power, and in performance of the duty imposed upon said reorganization committee under the said bondholders' agreement of Febuary 19, 1894, is in the form and contains the terms, powers, and conditions which to the committee seem equitable and fair; and, in accordance with the provisions of said bondholders' agreement, are now lodged at New York with the Farmers' Loan and Trust Company and the Mercantile Trust Company, at Berlin with the Deutsche Bank, and at London with the branch of the Deutsche Bank, which has been appointed by
3436 said reorganization committee as agent therefor, and also with said reorganization committee at its office, No. 15 Broad street, in the city of New York, at each of which places copies are left for distribution to bondholders; and a brief publication of the fact of the adoption and filing of such plan of reorganization will be made for at least two weeks in one or more daily newspapers published in the cities of New

York, London, and Berlin, and in the absence of express dissent in writing, filed within twenty days after the expiration of such publication (in compliance with the provisions of the second article of said bondholders' agreement), the assent to and ratification of the plan and this agreement shall be conclusively and finally assumed, conferred, and given by each and every certificate holder not so expressly dissenting herefrom. But, nevertheless, the managers, at their option, at any time, may by notice published in the manner hereinafter provided in article twelfth hereof, exclude from the operation of the plan and this agreement, and from any and all interest thereunder, any and all bonds represented by any such certificate issued under such bondholders' agreement, unless within the time and in the manner required in such public notice such certificate shall have been submitted to one of the depositaries hereunder for stamping, and by one of such depositaries shall have been stamped as expressly assenting to the plan and this agreement. 3437 3438

Holders of general second, general third, and consolidated mortgage bonds not already deposited under the bondholders' agreement of February 19, 1894, shall, by the delivery of their bonds to the depositaries, be deemed to have deposited their bonds under said bondholders' agreement, and for the bonds deposited will receive certificates of the Mercantile Trust Company of New York, issued under that agreement, which may be stamped by one of the depositaries as assenting to the plan and this agreement. 3439

All bonds represented by any such certificate, the holder of which shall have acquiesced as above provided, unless stamping of such certificates shall be required by the managers, as above provided, and all bonds represented by any certificate stamped as aforesaid, shall be subject to, and included within, the provisions of this plan and agreement as fully and irrevocably as though directly deposited hereunder, and the managers shall irrevocably possess and from time to time may exercise all rights of the holders of bonds represented by such certificates, subject to the terms thereof, including the right to abandon or terminate the said former agreement and all further proceedings thereunder. 3440

3441 All such certificates so acquiescing or so stamped are herein designated "Assenting Certificates," and the holders thereof are designated "Assenting Certificate Holders."

Such certificates of deposit and such assenting certificates and the interests represented thereby shall be transferable only subject to the terms and conditions of the plan and this agreement, and in such manner as the managers shall approve; and upon such transfer, all rights of the deposit or in respect of the deposited bonds or stock represented by such certificates, together with all installments paid by the de-
3442 positors of such stock, or their transferees, and all rights under the certificates of deposit or assenting certificates transferred, shall pass to the transferee, and the transferees and holders of such certificates of deposit or of such assenting certificate shall for all purposes be substituted in place of the prior holders, subject to this agreement. All such transferees, as well as the original holders of certificates of deposit or of assenting certificates, shall be embraced under the term "Depositors," whenever used herein. Each certificate of deposit or assenting certificate may be treated by the reorganization committee, by the managers, and by the deposi-
3443 taries as a negotiable instrument, and the holder for the time being may be deemed to be the absolute owner thereof, and of all rights of the original depositor of the bond or stock in respect of which the same was issued, and neither the depositaries nor the reorganization committee nor the managers shall be affected by any notice to the contrary. By accepting any such certificate, or by presenting any Mercantile Trust Company certificate to be stamped hereunder, every recipient or holder thereof shall thereby become party to the plan and this agreement with the same force and effect as
3444 though an actual subscriber hereto. The term depositor, as well as the term assenting certificate holder, whenever used herein, is intended, and shall be construed, to include not only persons acting in their own right, but also trustees, guardians, committees, agents, and all persons acting in a representative or fiduciary capacity, and those represented by or claiming under them, and partnerships, associations, joint-stock companies, and corporations. No rights hereun-

der shall accrue in respect of any securities hereinbefore mentioned unless, nor until, the same shall have been subjected to the control of the managers and to the operation of the plan and this agreement as herein provided. 3445

The depositaries shall receive the deposited stocks and bonds, and shall deliver the same to one or more trust companies in the city of New York, and the same shall be held by them, respectively, subject to the order and control of the managers.

The managers may, in their discretion, fix or limit the period or periods within which holders of bonds or stock, or other securities, or any class thereof, may deposit their securities, and within which they or holders of Mercantile Trust Company certificates may become parties to the plan and this agreement, and the periods within which the installments of cash payable by depositing holders of preferred and common stock must be paid, and, in their discretion, either generally or in special instances, may extend or renew the period or periods so fixed or limited, on such terms and conditions as they may see fit. 3446

Holders of securities not deposited, or of the Mercantile Trust Company certificates, not becoming parties hereto, in the manner herein provided, by stamping, if so required, within the periods respectively fixed or limited therefor, will not be entitled to deposit the same or to become parties to this agreement, or to share in the benefits thereof, and shall acquire no rights thereunder, except upon obtaining the express consent of the managers, who may withhold or give such consent, in their absolute discretion, and such terms and conditions as they may see fit. 3447

The several installments of cash, payable by depositing stockholders as provided in the plan and this agreement, must be paid to the respective depositaries, and must be receipted for by such depositaries on the respective certificates of deposit issued for such stock. The depositing stockholders agree that all such installments of cash may be used, at any time, by the managers, for any of the purposes of the plan and this agreement. Depositors of stock and holders of certificates of deposit for deposited stock respectively agree that 3448

prompt payment of the several installments of cash payable by them, respectively, on the terms of the plan and this agreement is an essential condition to their acquisition of new stock by purchase under the plan and this agreement, and that any depositor or any holder of a certificate of deposit for stock who shall fail to make prompt payment of any installment of cash payable as provided in the plan within the periods fixed or limited by the managers for such payment, shall forthwith and without further or other notice or action cease to have any rights, or to be entitled to any benefits hereunder, and in every such case the deposited stock and any cash paid as above provided, prior to the date of such default, shall vest in and belong to the managers, and may be used for any of the requirements of carrying out the plan and this agreement, and that no such defaulting depositor or certificate holder shall be entitled to the return or repayment thereof, or to have any further interest or rights in respect thereof. The managers, however, in their discretion, may waive any such default and accept payment of overdue installments due from any depositor at any time before final settlement of accounts with the syndicate.

The managers may, in their discretion, for the purpose of carrying out the plan of this agreement, call in for deposit any of the undisturbed main-line bonds mentioned in the plan, and may cause any mortgage securing the same to be foreclosed, and may cause other similar bonds having similar security, or the prior-lien bonds reserved therefor under the plan, to be issued in exchange for such bonds.

Second—The depositors and assenting certificate holders hereby irrevocably request the managers to endeavor to carry into practical operation the plan and this agreement, in its entirety or in part, to such extent and in such manner and with such additions, exceptions, and modifications as the managers shall deem to be for the best interests of the depositors and assenting certificate holders, or of the properties finally embraced in the reorganization. Each and every depositor and assenting certificate holder, for himself and not for any other, does hereby sell, assign, transfer, and set over to the managers as copartners, and to the survivor and sur-

vivors of them, and to their successors, each and every bond, 3453
share of stock, security, or obligation, or evidence thereof deposited hereunder, or represented by an assenting certificate, and every depositor and assenting certificate holder hereby agrees that the managers shall be, and they are hereby, vested with all the rights and powers of owners of the stock, bonds, securities, and obligations deposited hereunder, or represented by such assenting certificates, including the right to transfer the same into their own name, as a copart nership and as managers, or into the name of any other person or persons whom they may select; and (without limiting 3454
the foregoing provision) it is hereby declared that the managers shall be fully authorized to vote thereon at any meeting of stockholders or bondholders or creditors; to use every such stock, bond, receipt, security, or obligation as fully and to the same extent as the owner or holder thereof; to declare due the principal of any bond or other obligation deposited hereunder, and to revoke any such declaration whenever made; to call or attend, and, either in person or by proxy, to vote at any and all meetings of stockholders or bondholders or creditors of any corporation however convened; to terminate or to seek to dissolve or modify any trust, 3455
contract, or lease, in whole or in part; to apply for the determination of the validity thereof, or for the removal of any trustees or the substitution of other trustees, or to take any other steps in respect of any trust, contract, or lease, or under any provision thereof; to purchase at any time or times, at such prices as they shall deem proper, or to pay, compromise, or settle with the holders of any coupons, notes, or other indebtedness or obligations of any of the railroad companies, or any receiver's certificates or obligations issued, or which may be issued or incurred by the receivers thereof, and to apply 3456
for that purpose any moneys received from the sale of trust certificates for stock in the new company, or which may otherwise be received or raised by the reorganization committee or by them; to borrow money for any of the purposes of this agreement, and to charge or pledge any deposited securities, property purchased, or new securities to be issued, for the payment of any moneys borrowed; to give all bonds

of indemnity or other bonds, and to charge therewith the securities deposited hereunder, or any part thereof; to institute or to become parties to any legal proceeding; to apply for receivers, or for the removal of receivers and the substitution of other receivers, or for the termination of any receivership and the delivery of any property to its owners; to settle any litigation now or at any time existing or threatened, in whole or in part, with plenary power to enter into arrangements for decrees, or for facilitating or hastening the course of litigation, or in any way to promote the consummation of the plan; to do whatever, in the judgment of the managers, may be necessary to promote or to procure the sale as an entirety, or the joint or separate sales of any lands, grants of lands, property, or franchise herein concerned, wherever situated; to adjourn any sale of any property or franchise, or of any portion or lot thereof, at discretion; to bid, or to refrain from bidding, at any sale, either public or private, either in separate lots or as a whole, for any property or franchises, or any part thereof, whether or not owned, controlled, or covered by any deposited security, or by the bonds represented by any assenting certificate, including or excluding any particular rolling stock, or other property, real or personal, and at, before, or after any sale, to arrange and agree for the resale of any portion of the property which they may decide to sell rather than to retain; to hold any property or franchises purchased by them, either in their name or in the name of persons or corporations by them chosen for the purposes of this agreement, and to apply any security embraced hereunder in satisfaction of any bid, or toward obtaining funds for the satisfaction thereof; and the term property and franchise shall include any and all railroads, railroad and other transportation lines, branches, leaseholds, lands, rights in lands, mining rights, stocks, or other interests in corporations in which the railroad company has any interest of any kind whatever, direct or indirect. The amount to be bid or paid by the managers for any property or franchises shall be absolutely discretionary with them; and in case of the sale to others of any property or franchises, the managers may receive out of the proceeds of such sale, or otherwise, any dividend in any form accruing on any securities held by them.

Third—The managers may procure the organization of one 3461
or more new companies, or they may adopt or use any existing or future companies, and they may cause to be made such consolidations, leases, sales, or other arrangements, and may make or cause to be made such conveyances or transfers of any properties or securities acquired by them, and may take such other proceedings as they may deem proper for the purpose of creating the new securities provided for in this plan and agreement, and for carrying out all or any of the provisions thereof. Said managers shall further be authorized to receive and dispose of, in accordance with any of the pro- 3462
visions of this plan and agreement, the new securities to be created, and said managers may vote upon all the stock of such new corporation for all purposes in their judgment necessary to carry out the plan, until the same shall be transferred to the voting trustees, or to the depositors and assenting security holders, who shall be entitled to receive the same.

Fourth—The managers may construe the plan and this agreement; and their construction thereof or action thereunder, in good faith, shall be final and conclusive. They may supply any defect or omission, or reconcile any inconsistency 3463
in such manner and to such extent as shall be necessary to carry out the same properly and effectively, and they shall be the sole judge of such necessity. They shall be the sole and final judge as to when and whether the assent of enough parties interested in the railroad company shall have been obtained to warrant them in carrying the same, or any part, into effect, and they shall have power, whenever they shall deem proper, to abandon or to alter, modify, or depart from the plan of reorganization, or any part thereof. They may at any time or times, after any such partial abandonment, restore to the plan any abandoned part or parts thereof, and 3464
may seek to carry the same into effect as fully as if such part or parts had not been abandoned. They may also attempt to carry the plan into effect rather than abandon or modify the same, even though it be manifest that, as carried out, the plan must depart from the original plan, or from some part thereof. But in case of any intentional change or

modification or departure from the plan which, in their judgment, shall materially affect any of the several classes of depositors, or their mutual relations, a statement of such proposed change, modification, or departure shall be filed with the depositaries, and notice of the fact of such filing shall be given as hereafter provided in article twelfth; and within two weeks after final publication all holders of the outstanding certificates for such particular class or classes of securities affected thereby may surrender their respective certificates therefor and withdraw securities of such particular class or classes, or the proceeds thereof, or substitutes therefor then under the control of the managers, to the amount indicated in such certificates, and all assenting certificate holders may require cancellation of their assent and release herefrom of the securities represented by their assenting certificates: Provided, however, That in every case of withdrawal or cancellation the certificate holders, or the assenting certificate holders, shall respectively make payment of their shares of the expenses of the reorganization committee and of the managers, as apportioned by the latter. Every depositor of securities not so surrendering and withdrawing, and every assenting certificate holder not withdrawing his assent, within such two weeks after final publication, shall be deemed to have assented to the proposed changes or modifications, and whether or not otherwise objecting, shall be bound thereby as fully and effectively as if he had actually assented thereto. Any changes or modifications finally made by the managers shall be part of the plan and this agreement, and all provisions and references concerning the plan shall apply to the plan so changed or modified. In case the managers shall finally abandon the entire plan, the stocks and bonds deposited hereunder, or their proceeds, or any stocks, bonds, securities, or claims or representatives thereof, then under the control of the managers, shall be delivered to the several depositors in amounts representing their respective interests, upon surrender of their respective certificates and payment of such actual expenses as shall have been incurred by the reorganization committee and managers, which latter shall have power to determine and to apportion upon the several

classes of securities deposited hereunder the share of ex- 3469
pense to be borne by each security. In case of such abandonment, in like manner, and upon like payment of expenses, any assent of the assenting certificate holders shall be released by the managers, and until so released the general second, general third, and consolidated mortgage bonds represented by the assenting certificates shall be subject to their ratable share of such expense.

In any such case, any moneys paid by the depositing stockholders, or any coupons, receiver's certificates, or other obligations, claims, or property acquired therewith, or the pro- 3470
ceeds thereof, when received, remaining after deducting therefrom the share of the expenses incurred by the managers under this agreement apportioned upon such depositing stockholders, shall be equitably distributed or adjusted among the respective holders of certificates of deposit therefor; but the depositing stockholders, or holders of such certificates of deposit, shall have no claim for the repayment of any such moneys, except to the extent of their ratable shares of such moneys, or their proceeds, remaining in the hands of the managers after payment of such expenses.

In every such case of withdrawal, any cash paid or ad- 3471
vanced, as provided in the plan, to depositors of bonds, notes, or dividend certificates, or certificates of deposit therefor, or assenting certificates, and any interest paid or advanced to holders of certificates of deposit or assenting certificates in respect of deposited bonds, notes, or dividend certificates represented by such certificates of deposit or assenting certificates, or in respect of the new bonds to be issued in exchange therefor under the plan, must be repaid by the holders of such certificates before the deposited bonds, notes, or dividend certificates represented by such certificates of deposit
or assenting certificates shall be surrendered in exchange 3472
therefor; but any interest collected by the managers on deposited securities will in such case of withdrawal be accounted for by the managers to the holders of the certificates of deposit for such securities or of assenting certificates.

Fifth—The managers may proceed under the plan and this agreement, or any part thereof, with or without foreclosure,

and in case of foreclosure may exercise any power, either before or after foreclosure sale; and in every case all the provisions of the plan and this agreement shall equally apply to and in respect of any physical properties embraced under the reorganization, and to and in respect of any securities representing any such property, it being intended that for all purposes thereunder any such property, and any security representing such property, may be treated or accepted by the managers as substantially identical. In case any separate plan shall, in the opinion of the managers, become necessary or expedient to effect the reorganization of any subordinate or other company, the managers may promote and participate in any such reorganization, and may deposit thereunder any securities thereby affected.

In case of any claim, lien, or obligation not herein fully provided for and affecting the railroad company or any property or franchises thereof, the managers may, from time to time (subject, however, to article sixth hereof), make such compromise in respect thereto or such provision therefor as they may deem suitable, using therefor any securities not expressly required for settlement with depositors, or not expressly reserved for liens or obligations specified in the plan, but the total amount of new securities to be created, as set forth in the plan, shall not be thereby increased.

Any action contemplated in the plan and this agreement to be performed on or after completion and reorganization, may be taken by the managers at any time when they shall deem the reorganiaztion advanced sufficiently to justify such course, and the managers, as they may deem necessary, may defer the performance of any provision of the plan and this agreement, or may commit such performance to the new company.

They may also in their discretion set apart and hold in trust, or place in trust with any trust company, any part of the new securities to be issued and cash which may be received from sales of new securities, or otherwise, as they may deem judicious for the purpose of securing the application thereof for any of the purposes of the plan and this agreement.

Sixth—The managers may, from time to time, make contracts with any person, syndicate, or corporation for the purpose of carrying this agreement into effect, and by loan, guar-

anty, or by the sale of the new securities to be created, or 3477
otherwise, on such terms, conditions, and rates as said managers may deem proper; may obtain any moneys required to carry out the plan and this agreement, including such sums as the managers may deem expedient to provide for the uses of the new company; and for the performance of any contract said managers may charge the deposited securities and the new securities to be issued, and may pledge the same for the payment of any moneys borrowed and interest thereon, and other performance of any other obligations incurred under the powers herein conferred. The managers may employ counsel, agents, and all necessary assistance, and may incur and 3478
discharge any and all expenses by them deemed reasonable for the purposes of this agreement. They may prescribe the form of all securities and of all instruments at any time to be issued or entered into. They may create and provide for all necessary trusts and may nominate and appoint trustees thereunder, excepting that the reorganization committee shall make any appointment in lieu of or in succession to George Siemens, and that the protective committee shall make any appointment in lieu of, or in succession to, August Belmont, prior to the actual reception of stock by the voting trustees. 3479
They may, at public or private sale, or otherwise, dispose of any bonds and trust certificates for stock of the new company left in their hands because of any failure to make deposits hereunder. In so disposing of any such new securities thus left on their hands, they may use the same or the proceeds thereof for the purpose of carrying out the reorganization in such manner as they may deem expedient and advisable. At the time of the creation of the new securities, or as soon thereafter as may be, the managers may take such action (either by creating lesser amounts of securities or otherwise) as they may deem necessary to guard against the issue of such par- 3480
ticular securities in any manner or to any extent inconsistent with the purposes of the plan.

Seventh—Messrs. J. P. Morgan & Co., as managers, shall act as a copartnership, and in case of any change in said firm, the firm of J. P. Morgan & Co., as from time to time constituted, shall continue as managers, with all the powers, rights, and title vested in the managers hereunder. Neither the com-

3481 mittees nor the managers nor the depositaries assume any personal responsibility for the execution of the plan, or of this agreement, or any part of either, nor for the result of any steps taken or acts done for the purposes thereof, the managers, however, undertaking in good faith to endeavor to execute the same. No member of the reorganization committee, nor any depositary, nor the managers shall be personally liable for any act or omission of any agent or employe selected in good faith, nor for any error of judgment or mistake of law, nor in any case except for his, its, or their own
3482 individual, willful malfeasance or neglect; and no member of the reorganization committee shall in any case be personally liable for the act or omission of any other member nor for the acts of any depositary or of the managers, nor shall any depositary or the managers be personally liable for the acts or defaults of the reorganization committee, or of any other depositary or of any trust company. The managers may act through any committees or agents and may delegate any authority as well as discretion to any such committee or agent, and the members of such committee or such agents may be allowed a reasonable compensation for their services here-
3483 under, and the managers shall be entitled to the compensation stated in the plan. Any member of the managers or depositaries, or any member of either committee, at any time, may be a voting trustee and may be or become pecuniarily interested in any contracts, property, or matters which this agreement concerns, including participation in or under any syndicate agreement, whether or not mentioned in the plan. Any direction given by the managers shall be full and sufficient authority for any action of the depositaries or of any trust company or of any other custodian or of any committee or agent.

3484 The reorganization committee shall be entitled to reasonable compensation. It may discharge any and all reasonable expenses by it incurred for any of the purposes of this agreement or of the agreement of February 19, 1894. Its accounts shall be filed with the board of directors of the new company, and the same as filed shall be final, binding, and conclusive upon all parties having any interest therein. The compensation of the said reorganization and the protective committee and their

expenses shall be paid as part of the expenses of the reorganization. 3485

Eighth—The managers may negotiate and contract with any and all companies or persons for obtaining or granting running powers, terminal facilities, exchanges of property, or any other convenience which they may deem necessary or desirable to obtain or to grant, and may make contracts therefor binding upon such new company, and generally may ratify and make such purchases, contracts, stipulations, or arrangements as will, in their opinion, operate directly or indirectly to aid in the preservation, improvement, development, or protection of any property now constituting the Northern Pacific system, of which the railroad company or any subordinate company has contracted to acquire, or to prevent or avoid opposition to or interference with the successful execution hereof. 3486

Ninth—The accounts of the managers shall be filed with the board of directors of the new company within one year after its organization shall have been completed, unless a longer time be granted by the said board. The accounts, when approved by such board of directors, shall be final, binding, and conclusive upon all parties having any interest therein, and thereupon the managers shall be discharged. The acceptance of new securities by any depositor or any assenting certificate holder shall estop such acceptor from questioning the conformity of such securities in any particular to any provisions of the plan; and the acceptance of new securities by the holders of a majority in amount of the certificates of deposit and assenting certificates for any class of securities shall in each case respectively estop all holders of certificates of deposit and assenting certificates for securities of that class. 3487

Tenth—The enumeration of specific powers hereby conferred shall not be construed to limit or to restrict general powers herein conferred or intended so to be; and it is hereby distinctly declared that it is intended to confer on the managers, and each depositor hereunder, and each assenting certificate holder hereby confers on the managers, in respect of all securities deposited or to be deposited, or securities repre- 3488

sented by assenting certificates, and in all other respects any and all powers which the managers may deem necessary or expedient in or toward carrying out or promoting the purposes of the plan and this agreement in any respect, even though any such power be apparently of a character not now contemplated; and the managers may exercise any and every such power as fully and effectively as if the same were herein distinctly specified, and as often as, for any cause or reason, they may deem expedient. The methods to be adopted for or toward carrying out this agreement shall be entirely discretionary with the managers.

The bonds and other obligations deposited under the plan and this agreement, or represented by assenting certificates, and all receivers' certificates, coupons, and claims purchased or otherwise acquired under this agreement shall remain in full force and effect for all purposes, and shall not be deemed satisfied, released, or discharged by any delivery of new securities; and no legal right or lien shall be deemed released or waived, but said bonds and other claims, and any judgments upon any of such claims, including claims and judgments for deficiencies and all liens and equities shall remain unimpaired, and may be enforced by the managers or by the new company or by any or other assign of the managers until paid or satisfied in full or expressly released. Neither the managers nor any bondholders or creditors of the railroad company, by executing this agreement or by becoming parties thereto, release, surrender, or waive any lien, right, or claim in favor of any stockholders or other creditors of such company, and all such liens, rights or claims shall vest unimpaired in the managers and in the new company or its assigns, severally and respectively; and any purchase or purchases by or on behalf of the managers or the new company, under any decree for the enforcement of any such lien, right, or claim, shall vest the property purchased in the managers or the new company, free from all interest or claim on the part of any such stockholders, creditors, or other parties. No right is conferred, nor any trust, liability, or obligation (except the agreements herein contained in favor of the holders of certificates of deposit or assenting certificates hereunder), is created by the

plan and this agreement, or is assumed hereunder or by or for 3493
any new company in favor of any bondholder or any other creditor, or of any holder of any claim whatsoever against the railroad company, nor in favor of any company now existing or to be formed hereafter (whether such claim be based on any bonds, stocks, securities, lease, guaranty, or otherwise), with respect to any securities deposited under this agreement or any moneys paid to or received by managers or by the committee or depositaries hereunder, or with respect to any property acquired by purchase at any foreclosure sale, or with respect to any new securities to be issued hereunder, or with 3494
respect to any other matter or thing.

Eleventh—All moneys paid under or with reference to the plan and this agreement shall be paid over by the depositaries to the managers, who shall, as bankers, hold the same subject to application for any of the purposes of the plan and this agreement, as may be most convenient, and as from time to time may be determined by the managers, whose determination as to the propriety and purpose of any such application shall be final, and nothing in the plan shall be understood as limiting or requiring the application of specific moneys to specific purposes. Any obligation in the nature of floating 3495
debt or otherwise against any company or property embraced in the plan, either as proposed or carried out, or any securities held as collateral for any such obligation, may be acquired or extinguished or held by the managers at such times, in such manner, and upon such terms as they may deem proper for the purposes of reorganization, but nothing in the plan and this agreement contained is intended to constitute, nor shall it constitute, any liability or trust in favor or in respect of any such obligation.

Twelfth—All calls for the presentation of certificates for stamping, for the deposit of bonds and stocks, for the payment 3496
to be made by depositing stockholders, or for the surrender of certificates; all notices fixing or limiting any period for the deposit of securities or for such payments, or for the presentation of certificates for stamping, and all other calls or notices hereunder, except when otherwise provided, shall be inserted in the New York Times and the New York Tribune, or in two other daily papers of general circulation published in

3497 the city of New York; in the London Times and News, or in two other daily papers of general circulation published in the city of London, and in two daily papers of general circulation published in the city of Berlin, twice in each week for two successive weeks, beginning on any day of the week. Any call or notice whatsoever, when so published by the managers or by the Deutsche Bank, shall be taken and considered as though personally served on all parties hereto, and upon all parties bound hereby, as of the respective dates of insertion thereof, and such publication shall be the only notice required to be given under any provision of this plan and agreement; and
3498 all German translations of the plan and this agreement and of any call or notice thereunder shall be made under the direction or with the approval of the Deutsche Bank, and when so made shall be sufficient for publication in Germany; but in case of any discrepancy between such translation and the English original, the latter shall control, and, notwithstanding such discrepancy, shall bind all parties in interest. When a call or notice shall have been advertised as above specified in New York, or in London, or in Berlin, publication shall be complete as regards all holders of certificates of deposit
3499 and assented receipts issued or stamped by the depositaries in the city in which such publication shall have been made, and no further publication shall be required in such city.

Thirteenth—The plan and this agreement shall bind and benefit the several parties, including the depositors hereunder, their and each of their survivors, heirs, executors, administrators, successors, and assigns.

Fourteenth—In order fully to subject to every provision of the plan and this agreement, all general second, general third, and consolidated mortgage bonds now or hereafter represented by assenting certificates of the Mercantile Trust Company, and
3500 to obtain therefor all benefits hereunder, the Mercantile Trust Company of New York becomes a party hereto, and each assenting certificate holder hereby confers upon it full power and authority, either with or without the termination of the said bondholders' agreement of February 19, 1894, to hold subject to the plan and this agreement and to deliver to the managers or upon their order the bonds represented by any such assenting certificate, and full power and authority from

time to time thereafter to make, execute, and perform (such power and authority by it to be exercised when requested by the managers) such further or other instruments, agreements, and transfers as may be required hereunder in respect of any bonds represented by any such assenting certificates. 3501

In Witness Whereof a majority of the reorganization committee, the managers, the Mercantile Trust Company of New York, the Deutsche Bank, and the protective committee have caused these presents to be duly executed, and all other parties hereto have deposited securities or, as above set forth, have assented hereto in respect of certificates of the Mercantile Trust Company. 3502

EDWARD D. ADAMS.
JOHN C. BULLITT.
LOUIS FITZGERALD.
CHARLES H. GODFREY.
JOHN D. PROBST.
JAMES STILLMAN.
ERNST THALMANN.
THE MERCANTILE TRUST COMPANY,
By LOUIS FITZGERALD, President.
J. P. MORGAN & CO. 3503
DELTSCHE BANK,
By EDWARD D. ADAMS.
AUGUST BELMONT.
BRAYTON IVES.
GEORGE R. SHELDON.
CHARLEMAGNE TOWER, JR.

[Complainant's Exhibit 20.] 3504

Resolution of board of directors of Northern Pacific Railway Company, adopted at meeting November 13, 1901, retiring preferred stock.

The following preamble and resolutions, offered by Mr. Kennedy and seconded by Mr. Baker, were unanimously adopted:

3505 Whereas, Under and pursuant to an agreement dated July 13, 1896, the Northern Pacific Railway Company did acquire from Messrs. J. P. Morgan & Company a co-partnership in the city of New York (in said agreement called reorganization managers), certain stocks, bonds, and other property representing the system formerly of the Northern Pacific Railroad Company, and in consideration of such agreement and transfer did issue and deliver to the reorganization managers certificates for seven hundred and fifty thousand shares of its fully paid and nonassessable preferred stock, and eight
3506 hundred thousand shares of its fully paid and nonassessable common stock of the character described in a certain plan and agreement for the reorganization of the Northern Pacific Railroad system, dated March 16, 1896; and, further, did agree at all times and in all ways and particulars to co-operate with the reorganization managers and to assist them in carrying into effect and in accomplishing the purposes of the said plan and agreement of reorganization; and

Whereas, In and by the said plan and agreement of reorganization, it was expressly provided that the right would
3507 be reserved by the new company (being the Northern Pacific Railway Company) to retire this preferred stock, in whole or in part, at par from time to time upon any first day of January during the twenty years succeeding the date of said reorganization agreement—it being the purpose and intent of the said agreement that the ultimate control of the new company should be held and be exercised by the holders of the common stock—and that the preferred stock should, as soon as practicable, be liquidated and be paid off in cash at par; and

3508 Whereas, Upon the first day of July, 1896, at a meeting of the stockholders of the Northern Pacific Railway Company, each and every stockholder being present and voting in favor thereof, a resolution was duly adopted providing for the issue of eighty million dollars of common stock and seventy-five million dollars of preferred stock of the Northern Pacific Railway Company, and expressly prescribing that such preferred stock should be issued upon the condition that, at its option,

the company might retire the same, in whole or in part, at 3509
par from time to time upon any first day of January prior to
1917; and

Whereas, At a meeting of the directors of the Northern Pacific Railway Company, duly held on the 8th day of July, A. D., 1896, a form of certificate for the preferred stock of the company, with the conditions and regulations to be incorporated therein, or endorsed thereon, was duly adopted by the unanimous vote of the board of directors of the Northern Pacific Railway Company, including the following provision:

"The company shall have the right, at its option, and in 3510
such manner as it shall determine, to retire the preferred stock, in whole or in part, at par, from time to time, on any first day of January prior to 1917;" and

Whereas, At a meeting of the stockholders of the Northern Pacific Railway Company, duly held upon July 13, 1896, the said resolution of the board of directors adopting the said form of stock certificate to be issued for the preferred stock was duly ratified and approved by the affirmative vote of every stockholder of the company; and

Whereas, Each and every certificate for the seventy-five million dollars of preferred stock of the Northern Pacific Rail- 3511
way Company, containing the express provision for the retirement thereof from time to time thereafter, was issued under and pursuant to the provisions of the said resolution of July 1, 1896, and each and every certificate for stock now outstanding contains such express provision for the retirement thereof; and

Whereas, Under and pursuant to section 8 of the act, chapter 244 of the private and local laws of Wisconsin, approved April 15, 1895, it was expressly provided that all the affairs of this company should be managed by a board of direc- 3512
tors who should be stockholders, and who thereby were invested with all the power of the corporation, save as hereinafter provided; and

Whereas, In and by section 11 and section 12 of the said act, chapter 244 of the laws of 1895, it was expressly provided that this company might make this portion of the stock convertible into common stock upon such terms and conditions

as should be fixed by the board of directors, and that it might in its corporate name, execute and deliver its notes, bonds, debentures and other evidences of indebtedness in such form as from time to time should be prescribed by the board of directors, and in such amount as should be deemed from time to time by said board expedient, and might make the same convertible into its capital stock of any class upon such terms and conditions as to the board of directors might seem advisable; and

Whereas, The holders of a majority of the common stock of the Northern Pacific Railway Company have requested the board of directors to take all such action as may be requisite to retire the whole of the preferred stock upon the first day of January, 1902, and have given satisfactory assurances that the necessary moneys for that purpose will be furnished, and that all action requisite for that purpose will be taken by the holders of the common stock; and

Whereas, In the judgment of the board of directors of the Northern Pacific Railway Company it is desirable that this company should now exercise the option to retire the preferred stock in whole upon the first day of January, 1902:

Now, therefore, it is hereby unanimously resolved:

1. That the Northern Pacific Railway Company, in exercise of its rights specifically expressed in each and every certificate of stock of this company, has determined, and hereby does determine, to retire the preferred stock of the Northern Pacific Railway Company, in whole, at par, upon the first day of January, 1902.

2. That notice of the retirement of the preferred stock substantially in the form of that annexed to the minutes of this meeting be published in the manner prescribed by the by-laws for notice of a stockholders' meeting, and that a copy thereof be mailed to every stockholder of this company.

3. That, for the purpose of raising the funds necessary to retire the preferred stock, this company will make and will issue its negotiable bonds dated November 15, 1901, for the aggregate principal sum of seventy-five million dollars, payable January 1, 1907, in gold coin of the United States of the present standard of weight and fineness, at this company's office in the city of New York, with interest in like gold coin

at the rate of four per cent per annum from January 1, 1902, 3517
payable semi-annually at said office.

Every such bond shall be convertible into shares of the common stock of this company at the rate of one share of one hundred dollars for each one hundred dollars of the principal sum of such bonds remaining unpaid at the date of such conversion; and upon surrender to it of any such bond this company will issue to the holder of such surrendered bond shares of this company's common stock at the rate aforesaid. Such conversion may be made by the company, at its option, at any time after November 15, 1901, and shall be made at the 3518
demand of any holder of any such bonds at any time on or after the first day of January, 1902. Such bonds shall be coupon bonds or registered bonds in denominations each of one thousand dollars, or some multiple thereof, and shall be in such form as shall be determined by the president or vice-president of this company. Every such bond shall be subscribed by the president or a vice-president, and by the secretary or an assistant secretary, and shall be issued under the corporate seal.

4. That the president and vice-president of this company, and each of them, be, and hereby they are, authorized and 3519
empowered to contract to sell and to sell all or any of said bonds at a price not less than par and accrued interest, and in such contract to provide for the delivery of all or any part of said bonds upon receiving such payment therefor on or prior to or after December 31st, A. D. 1901; and also to covenant and agree that any and all moneys received for said bonds shall be specifically appropriated and used exclusively for the retirement of the preferred stock at par. And, accordingly, it is hereby expressly declared that all of such proceeds shall be set apart and shall be held as a trust fund for such purpose.

Any such contract for delivery of such bonds prior to Jan- 3520
uary 1, 1902, may provide for the payment of the whole or any part of the purchase price of any bonds, with allowance of interest at a rate not exceeding four per cent per annum from the time of the receipt of the price of such bonds until January 1, 1902, the date when such bonds begin to bear interest.

3521 Any and every such contract shall contain a provision giving to the holder of every share of this company's common stock now outstanding suitable opportunity, on demand, to receive through or from the purchaser of said bonds under said contract, at a price not exceeding par and accrued interest, such bonds (or a like amount of common stock received upon conversion of said bonds, if thereafter converted) to an amount equal to seventy-five eightieths of the par amount of said common stock at such time owned by such holder; and for the purpose of providing for subdivision of interests,
3522 suitable certificates representing fractional interests in bonds from time to time may be issued, and may be redeemed in such manner as shall be determined by the president or the vice-president.

5. That the proper officers of this company be, and hereby they are, directed, out of the proceeds of said bonds, and out of any other moneys in the company's treasury available for that purpose, to pay at the company's New York office to each holder of record of the preferred stock of this company on and after January 1, 1902, upon surrender of the certificate for such stock, one hundred dollars for each and every of
3523 the shares of preferred stock for which the certificates shall be so surrendered.

6. That all the preferred stock of this company be, and hereby it is declared to be, retired from and after December 31st, A. D., 1901; and that from and after that date all of the authorized capital stock of this company, fixed at one hundred and fifty-five million dollars by resolution of this company's stockholders at a meeting thereof held on the first day of July, 1896, be of one kind, and be without preference in favor of any part thereof, and the total authorized capital of the stock of this company continue to be one hundred and fifty-
3524 five million dollars as so fixed at said meeting.

7. That the president, the vice-president, the treasurer, and the secretary of the Northern Pacific Railway Company be, and hereby they are, authorized from time to time to take all proceedings and to do all acts necessary or suitable to carry these resolutions fully into effect.

8. That for the purposes of the retirement of the pre-

ferred stock the transfer books of the stock of this company 3525
be closed at 3 o'clock p. m. on Tuesday, December 10, 1901, and
that the transfer books of the common stock be reopened
upon Thursday, January 2, 1902, at 10 o'clock a. m.

[Complainant's Exhibit 21.]

Notice of Retirement of Northern Pacific Preferred Stock,
Dated November 13, 1901: 3526

NORTHERN PACIFIC RAILWAY COMPANY.

Retirement of Preferred Stock.

To the holders of preferred stock of the Northern Pacific
Railway Company:

Notice hereby is given that, in the exercise of the power
reserved by the Northern Pacific Railway Company and spe-
cifically declared in every outstanding stock certificate, the 3527
company has duly determined to retire the preferred stock,
and the same will be retired in whole at par upon the first
day of January, 1902.

Accordingly each and every holder of preferred stock is
notified to present and surrender his certificate for such pre-
ferred stock at the office of the Northern Pacific Railway
Company, 49 Wall street, in the city of New York, on and
after the first day of January, 1902, and upon such surrender
to receive payment in cash of the par amount thereof.

For the purpose of such retirement the transfer books of
the Northern Pacific Railway Company will close at 3 o'clock 3528
p. m. on Tuesday, December 10, 1901, and the transfer books
of the common stock will reopen Thursday, January 2, 1902,
at 10 o'clock a. m.

By order of the board of directors.

GEORGE H. EARL,
Secretary.

Dated November 13, 1901.

3529

[Complainant's Exhibit 22.]

Extract from proceedings of meeting of board of directors of Northern Pacific Railway Company, December 11, 1901, settting forth form of convertible certificate Scrip issued for the retirement of the preferred stock.

The chairman submitted a form of convertible certificate scrip which had been prepared to meet the requirements of the fourth of the series of resolutions of November 13, 1901.

3530 On motion, it was resolved that the president, or any vice-president, and the secretary, or any assistant secretary, be, and hereby they are, authorized and directed from time to time to execute in such amounts as may be necessary convertible certificate scrip in the following form, to-wit:

United States of America.

No. —— $——

Northern Pacific Railway Company.

3531

Four per cent convertible certificate scrip:

This certifies that the holder hereof is entitled, on the first day of January or of July, in any year until January 1, 1907, to receive ——— dollars, par value, in the four per cent convertible certificates of the Northern Pacific Railway Company, duly authorized November 13th and 15th, 1901, on presentation and surrender of this and like certificates in the aggregate representing the even sum of one thousand dollars, or

3532 of some even multiple thereof, at the office of the Northern Pacific Railway Company, in the city of New York.

This scrip bears four per cent annual interest, payable in cash semi-annually, July first and January first, until January first, 1907 (unless called for exchange prior to that date), and the said convertible certificates, when received in exchange for scrip of this issue, will bear four per cent interest from the date of such exchange.

3533 The Northern Pacific Railway Company, at its option, may deliver certificates for fully paid shares of its common stock at par (instead of convertible certificates) in satisfaction and redemption of this scrip at par. In no event will the principal of this scrip be redeemable or payable in money.

In witness whereof the Northern Pacific Railway Company has caused this certificate to be signed by its president, or one of its vice-presidents, and its corporate seal to be hereunto affixed, and to be attested by its secretary, or assistant secretary this —— day of ——, 19—.

3534

NORTHERN PACIFIC RAILWAY COMPANY,
By ——— ———,
Vice-president.

(L. S.)
Attest:
——— ———
Secretary.

3535

[Complainant's Exhibit 23.]

Notice that Northern Pacific Preferred Stock Has Been Retired, Dated January 2, 1902.

The president submitted the following forms of notices which had been duly published, to-wit:

NORTHERN PACIFIC RAILWAY COMPANY.

Notice That Preferred Stock Has Been Retired. 3536

To the holders of certificates of the Northern Pacific Railway Company:

Notice is hereby given that in the exercise of the power reserved by the Northern Pacific Railway Company and specifically declared in every stock certificate issued and outstanding prior to November 15th, 1901, the company has re-

3537 tired the preferred stock, and the same was retired at whole on the first day of January, 1902. Each and every holder of the certificate for preferred stock not heretofore surrendered is notified that, on presentation and surrender of this certificate at the office of the Northern Pacific Railway Company, 49 Wall street, in the city of New York, he will receive payment in cash for the par amount of such certificate.

No holder of any certificate of preferred stock now has, or hereafter will have, any right as stockholder, nor any claim against the company, except to receive payment for certifi-
3538 cates surrendered at the rate above stated.

Dated January 2, 1902.

By order of the directors.

GEORGE H. EARL,
Secretary.

[Complainant's Exhibit 24.]

Agreement between Northern Pacific Railway Company and
3539 Standard Trust Company, dated November 15, 1901.

Memorandum of Agreement, made this 15th day of November, A. D. 1901, by and between Northern Pacific Railway Company, a corporation of the State of Wisconsin, of the first part, and the Standard Trust Company of New York, a corporation of the State of New York (hereinafter termed "Trust Company"), of the second part,

Witnesseth, that the parties hereto have mutually agreed as follows:

3540 ARTICLE I.

On January 1, 1902, Northern Pacific Railway Company agrees to sell and deliver to the Trust Company, and the Trust Company agrees to buy from Northern Pacific Railway Company, at their face value, all the convertible certificates of indebtedness of the Northern Pacific Railway Company, for the aggregate principal sum of seventy-five million dollars

($75,000,000), of the issue authorized by vote of the directors 3541
of said company passed November 13, 1901, except such of said certificates as shall be purchased by the holders of the common stock of said corporation, as recited in Article III of this agreement.

Such convertible certificates are to be dated November 15, 1901, and to be payable on January 1, 1907, in gold coin of the United States of the present standard of weight and fineness, at said company's office in the city of New York, and to bear interest in like gold coin at the rate of four per cent per annum from January 1, 1902, payable semi-annually at said 3542
office. Every such certificate shall be convertible into shares of the common stock of the Northern Pacific Railway Company at the rate of one share of one hundred dollars ($100) par value for each one hundred dollars ($100) of the principal of such certificate remaining unpaid at the date of such conversion; and upon surrender to it of any such certificate said railway company will issue to the holder of such surrendered certificate shares of its common stock at the rate aforesaid. Such conversion may be made by the Northern Pacific Railway Company, at its option, at any time after November 15, 1901, and shall be made at the demand of any holder of any 3543
such certificate at any time on or after January 1, 1902. Such certificates shall be in denominations each of one thousand dollars, or some multiple thereof, and shall be substantially of the tenor of the draft thereof, marked "Exhibit A," hereto attached.

Until engraved or lithographed certificates can be prepared, temporary certificates, in form satisfactory to the Trust Company, shall be deliverable hereunder, which temporary certificates shall be exchangeable for engraved or lithographed certificates as soon as the same shall be ready for delivery. 3544

ARTICLE II.

Northern Pacific Railway Company covenants and agrees with the Trust Company that all moneys received for such certificates shall be specifically appropriated and used exclusively for the retirement of the preferred stock of the North-

3545 ern Pacific Railway Company at par, and shall be set apart as a trust fund for such purpose.

ARTICLE III.

It is understood and agreed that suitable opportunity shall be given to every holder of common stock of the Northern Pacific Railway Company registered at the closing of the transfer books on December 10, 1901, to purchase and to pay for, at the price hereinafter stated, an amount of such certificates (subject to a proper adjustment for fractional amounts of cer-
3546 tificates) equal to seventy-five eightieths of the par amount of such common stock owned of record by such stockholder.

At any time prior to the sale and delivery of such certificates to the Trust Company, the Northern Pacific Railway Company may sell and deliver, at the price hereinafter stated, to any such holder of common stock, the amount of such certificates which such holder of common stock is to be given such opportunity to purchase; but in case any such sale be made to any stockholder prior to the closing of the transfer books on December 10, 1901, such arrangement shall be made
3547 as will prevent any transfer of such stock before the re-opening of the transfer books on January 2, 1902, except subject to the condition that the transferees and subsequent holders of such stock, prior to such re-opening of the transfer books, shall release any and all right to purchase any of such certificates from the Northern Pacific Railway Company. As soon as practicable, the Northern Pacific Railway Company, by notice, shall extend to each holder of its common stock registered at the closing of the transfer books on December 10, 1901, suitable opportunity, until January 1, 1902, to purchase, at the price hereinafter stated, an amount of such certificates
3548 (subject to adjustment as aforesaid) equal to seventy-five eightieths of the par amount of such common stock owned of record by such stockholder.

After the sale and delivery to the Trust Company of such of said certificates as shall not have been purchased by the stockholders of the Northern Pacific Railway Company, the Trust Company will give to every holder of common stock of said company registered at the closing of the transfer books

on December 10, 1901 (other than holders of common stock who previously shall have purchased, or shall have had suitable opportunity to purchase), a ratable share of such certificates, as aforesaid, suitable opportunity, not later than March 1, 1902, to receive, on demand, through or from the Trust Company, upon payment to the Trust Company of the price hereinafter stated, an amount of such certificates (subject to adjustment as aforesaid) equal to seventy-five eightieths of the par amount of such common stock owned of record by such stockholders (or a like amount of common stock received upon conversion of such certificates if theretofore converted). 3549 3550

The price payable for all such certificates sold under this article on or before January 1, 1902, shall be a sum equal to the principal thereof. The price payable for all such certificates sold and delivered under this article after January 1, 1902, shall be a sum equal to the principal thereof and the interest accrued thereon. The price payable for any stock received upon conversion of such certificates shall be the same as the price which would have been payable for a corresponding amount of such certificates.

Under the provisions of this article every such holder of common stock shall only be given the opportunity to purchase, either from the Trust Company or from the Northern Pacific Railway Company, such amount of such certificates (or stock) as in the aggregate shall be equal to seventy-five eightieths of the par amount of the common stock owned of record by such stockholder at the close of the transfer books on December 10, 1901. 3551

ARTICLE IV.

In case the Northern Pacific Railway Company shall fail to sell and to deliver such certificates to the Trust Company at the times and in the manner herein provided, or shall fail to comply with all its agreements herein contained, or in case the Northern Pacific Railway Company shall fail to issue its common stock in exchange for all certificates delivered hereunder to the Trust Company when and as demand therefor shall be made by the Trust Company or other holder, then 3552

3553 and in any such case the Trust Company, at its option, by notice delivered at the office of the Northern Pacific Railway Company in the city of New York, may forthwith rescind this agreement, and thereupon the Northern Pacific Railway Company, upon surrender to it of any of such certificates, shall be bound to repay to the Trust Company or other holder the price paid for such certificates hereunder, with proper allowance of interest.

This agreement shall be deemed strictly *inter partes*, and shall not give any rights to any person or corporation except
3554 the Trust Company and the Northern Pacific Railway Company, except as provided in the certificates themselves.

In witness whereof the parties hereto have caused these presents to be signed by their officers duly authorized the day and year first above written.

NORTHERN PACIFIC RAILWAY COMPANY,
(Corporate Seal) By C. S. Mellen, President.
Attest:
Geo. H. Earl, Secretary.

THE STANDARD TRUST COMPANY OF NEW YORK,
3555 (Corporate Seal) By William C, Lane, President.
Attest:
Wm. C. Cox, Secretary.

[Exhibit A.]

No..... $.....

UNITED STATES OF AMERICA.

Northern Pacific Railway Company.

3556 Temporary Four Per Cent Convertible Certificate.

Northern Pacific Railway Company (hereinafter termed the "Railway Company"), for value received, promises to pay to bearer, or to the registered holder of this certificate, if the same shall be registered, on the first day of January, 1907, upon presentation and surrender of this certificate for cancellation at its office in the city of New York, ...

dollars, in the gold coin of the United States of America of 3557
the present standard of weight and fineness, and to pay interest thereon at the rate of four per cent per annum from January 1, 1902, such interest being payable at said office, in like gold coin semi-annually, on the first day of January and the first day of July in each year, to the bearer or to the registered holder of this certificate, upon presentation of the certificate and endorsement of such payment thereon. Both the principal and interest of this certificate are payable without deduction for any tax or taxes which the Railway Company may be required to pay or to retain therefrom under any 3558
present or future law of the United States or of any State, county or municipality therein.

Upon demand of the holder of this certificate at any time after January 1, 1902, and upon presentation and surrender of this certificate for cancellation, this certificate shall be convertible into common stock of the Railway Company, at the rate of one share of $100 for each $100 of the unpaid principal of this certificate, and upon such demand and such presentation and surrender of the certificate, the Railway Company will issue to the holder its common stock at the rate aforesaid. In case the Railway Company shall fail to make 3559
such conversion, then and in every such case, at the option of the holder, the principal of this certificate shall become and be forthwith due and payable, with the interest accrued and unpaid.

At any time after the date hereof, at its election, the Railway Company may require the holder of this certificate to convert the same into common stock of the Railway Company, at the rate of one share of $100 for each $100 of the unpaid principal of this certificate, and upon advertisement by the Railway Company of such election in either the New York Times or the New York Tribune, newspapers published 3560
in the city of New York, the holder shall, upon presentation and surrender hereof, be entitled to receive common stock of the Railway Company at the rate of one share of $100 for each $100 of the unpaid principal of this certificate; and from and after such advertisement no interest shall accrue or be payable upon or in respect of this certificate from the interest day next preceding the date of such advertisement, and

3561 the principal of this certificate shall not be payable in cash, but the holder shall be entitled only to receive common stock of the Railway Company in exchange for this certificate as hereinbefore provided.

This temporary certificate is exchangeable for an engraved or lithographed certificate when the same shall be ready for delivery, and is one of a series of similar certificates of the Railway Company issued and to be issued for the aggregate principal sum of seventy-five million dollars, such issue having been authorized by resolution of the board of directors of
3562 the Railway Company, passed November 13, 1901, to which reference hereby is made. All moneys received for the certificates of said issue have been specifically appropriated and will be used exclusively for the retirement at par of the preferred stock of the Railway Company, and will be set apart as a trust fund for such purpose.

This certificate may be registered in the owner's name on the books of the Railway Company, at its office or agency at the city of New York, such registry being noted on the certificate by the certificate registrar of the Railway Company. After such registration no transfer shall be valid unless made
3563 on the Railway Company's books by the registered owner and similarly noted on the certificate, but the same may be discharged from registry by being transferred to bearer, and thereafter transferability by delivery shall be restored, but this certificate again from time to time may be registered or transferred to bearer as before.

In witness whereof the Northern Pacific Railway Company has caused these presents to be signed by its president or one of its vice-presidents, and its corporate seal to be hereunto affixed and to be attested by its secretary or assistant secretary, this 15th day of November, 1901.

3564

NORTHERN PACIFIC RAILWAY COMPANY,

(L. S.) By ....., President.

Attest:

....., Secretary.

COMPLAINANT'S EXHIBIT 25. 893

3565

(Endorsed).

No..... $.....

NORTHERN PACIFIC RAILWAY COMPANY.

Temporary Four Per Cent Convertible Certificate.

Interest due January and July.

Registered in the name of	Date	Registrar.

3566

[Complainant's Exhibit 25.] 3567

Agreement between Standard Trust Company and certain underwriters, dated November 18, 1901.

Agreement made this 18th day of November, 1901, between the Standard Trust Company of New York (hereinafter called the "Trust Company"), party of the first part, and the other signers of this agreement, or of counterparts thereof (hereinafter called the "Subscribers"), parties of the second part.

The Trust Company, at the request of the subscribers, has made or is about to make an agreement with the Northern Pacific Railway Company of even date herewith (a copy of which is hereto annexed and marked "Exhibit A"), upon the express condition that the subscribers hereto enter into this agreement. 3568

In consideration of the premises, the parties have agreed as follows:

3569 I. The Subscribers hereby severally agree with the Trust Company and with each other to pay to the Trust Company upon its demand, in the proportions set opposite their respective signatures hereto, such sums of money as the Trust Company may from time to time require to meet its obligations under this agreement with the Northern Pacific Railway Company, and the Subscribers further agree in such several proportions to hold the Trust Company harmless from any loss, liability, or expense under or by reason of said agreement with the Northern Pacific Railway Company, or because
3570 of any distribution hereunder of the securities to be received by the Trust Company under said agreement.

II. The Subscribers shall severally be entitled to share, in the proportions set opposite their respective signatures hereto, in the benefits of said agreement and in all convertible certificates and common stock of the Northern Pacific Railway Company which shall remain with the Trust Company after the performance of its obligations under said agreement.

3571 III. The Trust Company shall issue to the Subscribers suitable certificates of participation referring to this agreement, upon which certificates any payments made by the Subscribers shall be endorsed. The Trust Company shall be entitled to reimbursement for its expenses and to reasonable compensation. The written advice of counsel shall be full protection to the Trust Company, as against the Subscribers, for any action it may from time to time take hereunder or in connection with said agreement. This agreement shall bind the executors and administrators of the respective Subscribers.

3572 In witness whereof The Standard Trust Company of New York has caused this instrument to be executed, and its corporate seal to be hereunto affixed by its proper officers, and the parties of the second part have hereunto set their hands the day and year first above written.

COMPLAINANT'S EXHIBIT 25. 895

THE STANDARD TRUST COMPANY OF NEW YORK, 3573

By Wm. C. Lane, President.

(Corporate Seal.)
Attest: W. C. Cox, Secretary.

Signature of Subscriber.	Proportion of Entire Obligation Taken by Subscriber.
Kuhn, Loeb & Co.	One-third (1/3) or twenty-five million dollars ($25,000,000).
J. P. Morgan & Co.	One-third (1/3) or twenty-five million dollars.
Jas. J. Hill	One-ninth (1/9)
Geo. F. Baker	One-ninth (1/9)
John S. Kennedy	One-ninth (1/9)

3574

or 1/3.

EXHIBIT A.

Memorandum of agreement, made this —— day of November, A. D. 1901, by and between Northern Pacific Railway Company, a corporation of the State of Wisconsin, of the first part, and The Standard Trust Company of New York, a corporation of the State of New York (hereinafter termed the "Trust Company"), of the second part. 3575

Witnesseth, that the parties hereto have mutually agreed as follows:

ARTICLE I.

On January 1, 1902, Northern Pacific Railway Company agrees to sell and to deliver to the Trust Company, and the Trust Company agrees to buy from Northern Pacific Railway Company, at their face value, all the convertible certificates of indebtedness of the Northern Pacific Railway Company for the aggregate principal sum of seventy-five million dollars ($75,000,000), of the issue authorized by vote of the directors of said company passed November 13, 1901, except such of said certificates as shall be purchased by the holders of the common stock of said corporation, as recited in Article III. of this agreement. 3576

Such convertible certificates are to be dated November 15, 1901, and to be payable on January 1, 1907, in gold coin of the

3577 United States of the present standard of weight and fineness, at said company's office in the city of New York, and to bear interest in like gold coin at the rate of four per cent per annum from January 1, 1902, payable semi-annually at said office. Every such certificate shall be convertible into shares of the common stock of the Northern Pacific Railway Company at the rate of one share of one hundred dollars ($100) par value for each one hundred dollars ($100) of the principal of such certificate remaining unpaid at the date of such conversion; and upon surrender to it of any such certificate said
3578 Railway Company will issue to the holder of such surrendered certificate shares of its common stock at the rate aforesaid. Such conversion may be made by the Northern Pacific Railway Company, at its option, at any time after November 15, 1901, and shall be made at the demand of any holder of such certificate at any time on or after January 1, 1902. Such certificates shall be in denominations each of one thousand dollars, or some multiple thereof, and shall be substantially of the tenor of the draft thereof, marked "Exhibit A," hereto attached.

Until engraved or lithographed certificates can be prepared,
3579 temporary certificates, in form satisfactory to the Trust Company, shall be deliverable hereunder, which temporary certificates shall be exchangeable for engraved or lithographed certificates as soon as the same shall be ready for delivery.

ARTICLE II.

Northern Pacific Railway Company covenants and agrees with the Trust Company that all moneys received for such certificates shall be specifically appropriated and used exclusively for the retirement of the preferred stock of the North-
3580 ern Pacific Railway Company at par, and shall be set apart as a trust fund for such purpose.

ARTICLE III.

It is understood and agreed that suitable opportunity shall be given to every holder of common stock of the Northern Pacific Railway Company registered at the closing of the transfer books on December 10, 1901, to purchase and to pay

for, at the price hereinafter stated, an amount of such cer- 3581
tificates (subject to a proper adjustment for fractional amounts of certificates) equal to seventy-five eightieths of the par amount of such common stock owned of record by such stockholder.

At any time prior to the sale and delivery of such certificates to the Trust Company, the Northern Pacific Railway Company may sell and deliver, at the price hereinafter stated, to any such holder of common stock, the amount of such certificates which such holder of common stock is to be given such opportunity to purchase; but in case any such sale be 3582
made to any stockholder prior to the closing of the transfer books on December 10, 1901, such arrangements shall be made as will prevent any transfer of such stock before the reopening of the transfer books on January 2, 1902, except subject to the condition that the transferees and subsequent holders of such stock prior to such reopening of the transfer books shall release any and all right to purchase any of such certificates from the Northern Pacific Railway Company. As soon as practicable the Northern Pacific Railway Company, by notice, shall extend to each holder of its common stock registered at the closing of the transfer books on December 3583
10, 1901, suitable opportunity until January 1, 1902, to purchase at the price hereinafter stated an amount of such certificates (subject to adjustment as aforesaid) equal to seventy-five eightieths of the par amount of such common stock owned of record by such stockholder.

After the sale and delivery to the Trust Company of such of said certificates as shall not have been purchased by the stockholders of the Northern Pacific Railway Company, the Trust Company will give to every holder of common stock of said company registered at the closing of the transfer books on December 10, 1901 (other than holders of common stock 3584
who previously shall have purchased or shall have had suitable opportunity to purchase a ratable share of such certificates as aforesaid), suitable opportunity, not later than March 1, 1902, to receive on demand, through or from the Trust Company, upon payment to the Trust Company of the price hereinafter stated, an amount of such certificates (subject to adjustment as aforesaid) equal to seventy-five eightieths of the

3585 par amount of such common stock owned of record by such stockholder (or a like amount of common stock received upon conversion of such certificates if theretofore converted).

The price payable for all such certificates sold under this article on or before January 1, 1902, shall be a sum equal to the principal thereof. The price payable for all such certificates sold and delivered under this article after January 1, 1902, shall be a sum equal to the principal thereof, and the interest accrued thereon. The price payable for any stock received upon conversion of such certificates shall be the
3586 same as the price which would have been payable for a corresponding amount of such certificates.

Under the provisions of this article every such holder of common stock shall only be given the opportunity to purchase, either from the Trust Company or from the Northern Pacific Railway Company, such amount of such certificates (or stock) as in the aggregate shall be equal to seventy-five eightieths of the par amount of the common stock owned of record by such stockholder at the closing of the transfer books on December 10, 1901.

3587

ARTICLE IV.

In case the Northern Pacific Railway Company shall fail to sell and to deliver such certificates to the Trust Company at the times and in the manner herein provided, or shall fail to comply with its agreements herein contained, or in case the Northern Pacific Railway Company shall fail to issue its common stock in exchange for all certificates delivered hereunder to the Trust Company when and as demand therefor shall be made by the Trust Company or other holder, then
3588 and in any such case the Trust Company, at its option, by notice delivered at the office of the Northern Pacific Railway Company in the city of New York may forthwith rescind this agreement, and thereupon the Northern Pacific Railway Company, upon surrender to it of any of such certificates, shall be bound to repay to the Trust Company or other holder the price paid for such certificates hereunder, with proper allowance of interest.

This agreement shall be deemed strictly *inter partes*, and 3589
shall not give any rights to any person or corporation except the Trust Company and the Northern Pacific Railway Company, except as provided in the certificates themselves.

In witness whereof the parties hereunto have caused these presents to be signed by their officers duly authorized the day and year first above written.

NORTHERN PACIFIC RAILWAY COMPANY,

By ———— ———— 3590

THE STANDARD TRUST COMPANY OF NEW YORK,

By ———— ————.

3591

[Complainant's Exhibit 27.]

St. Paul, Minn., Jan. 23rd, 1902.

Agents:

Moorhead,	East Grand Forks,	St. Cloud,
Fargo,	Crookston,	Sauk Centre,
Davenport,	Glyndon,	Morris,
Casselton,	Breckenridge,	Wadena,
Leeds,	Wahpeton,	Fergus Falls.
Grafton,	Anoka,	
Grand Forks,	Elk River,	

Dear Sir:

3592

The instructions contained in joint circular (N. P. Ry. Circular 114, G. N. Ry. G. F. O. 5856 of 1900) dated Jan. 25th, 1900, are hereby modified with respect to the interchange of traffic between local or junction points in Minnesota or North Dakota west of the eastern terminal, as follows:

Freight shipments from one junction point to another junction point, will be forwarded via the line having the shorter mileage and lower rates; the longer line will not undertake to equalize the rates based on the shorter mileage of the other.

Freight from a junction point destined to a local point on 3593
the other company's line may be accepted if the joint rate made on the sum of the locals of both companies is less than the rate of company on whose line the local point is located, for example:

Shipments from Fergus Falls to Mapleton may be routed via the Great Northern to Fargo thence via the Nor. Pac. to Mapleton. Shipments from Fargo to Amenia may be routed via the Nor. Pac. Ry. to Casselton thence via the G. N. Ry. to Amenia.

Rates made by combination of local rates will not include 3594
any transfer charges at junction points.

Any former instructions conflicting with the above are hereby canceled.

Yours truly,

J. O. DALZELL,
D. F. A.

(Copy.)

3595

[Complainant's Exhibit 28.]

Copy of letter addressed to junction points with G. N. in Minnesota and North Dakota.

March 27th, 1902.

Dear Sir:

Please refer to my circular letter Jan. 23rd with reference to handling freight shipments from one junction point to another junction point when shorter mileage of competing lines make it necessary to reduce our rates. You may cancel
3596 the instructions contained in that circular letter. If business presents itself to be handled between junction points and it is necessary to shrink our charges in order to meet competition, you may take up with me and I will give you special instructions to cover.

Yours truly,
(Signed) J. O. DALZELL,
D. F. A.

(Copy.)

3597 [Complainant's Exhibit 29.]

Great Northern Railway.

Great Northern Railway Company.
Montana Central Railway Company.
General Freight Department.

G. O. Somers, General Freight Agent, St. Paul, Minn.
Jno. A. Sargent, Assistant General Freight Agent, St. Paul, Minn.
Archibald Gray, Assistant General Freight Agent, Butte, Mont.

St. Paul, Minn., Jan. 28th, 1902.

3598 AGENT, Great Northern Ry.,
Moorhead, Minn.

Dear Sir:

Please refer to File B-2.

The instructions contained in the joint circular (N. P. Ry. Circular 114, G. N. Ry. G. F. O. No. 5856 of 1900) dated Jan. 25th, 1900, are hereby modified with respect to the inter-

change of traffic between local or junction points in Minnesota 3599
or North Dakota west of the eastern terminal, as follows:

Freight shipments from any junction point to another junction point, will be forwarded via the line having the shorter mileage and lower rates; the longer line will not undertake to equalize the rates based on the shorter mileage of the other.

Freight from a junction point destined to a local point on the other company's line may be accepted if the joint rate made on the sum of the locals of both companies is less than the rate of company on whose line the local point is located, for example: 3600

Shipments from Fergus Falls to Mapleton may be routed via the Great Northern to Fargo, thence via the Northern Pacific to Mapleton. Shipments from Fargo to Amenia may be routed via the Northern Pacific Ry. to Casselton, thence via the Great Northern Ry. to Amenia.

Rates made by combination of local rates will not include any transfer charges at junction points.

Any former instructions conflicting with the above are hereby canceled.

Please acknowledge receipt of this letter, and advise if fully understood. 3601

Yours truly,

JNO. A. SARGENT,

Asst. General Freight Agent.

[Complainant's Exhibit 30.]

GREAT NORTHERN RAILWAY LINE.

Legal Department.

St. Paul, Minn., October 29th, 1902. 3602

Messrs. Leech Bros.,

Fargo, N. D.,

Dear Sirs:

Acknowledging receipt of your favor of the 25th inst., relative to the demand of representative of the Right of Way Department for compensation for re-conveying to you right of way formerly occupied by spur track.

3603 I have taken the matter up with the President's office, and think you will be entirely satisfied with the result. I think you will hear from the matter within a very short time, and feel confident that you will not be required to pay a consideration for a re-conveyance of what you donated to the Company.

I also discussed the question relative to the policy of taking out the spur track, and am assured that it was a purely business proposition, and when either one of you are in St. Paul I shall take pleasure in having the matter discussed and explained.

3604 I assure you that this company and its representatives are entirely friendly, and feel the desire to have you continue your patronage and friendly relations.

Yours truly,

W. E. DODGE,

Attorney.

3605

[Complainant's Exhibit 31.]

CHAPTER 415.

An act granting swamp lands to aid in the construction of the main line of railroad of the Little Falls and Dakota Railroad Company.

Be it enacted by the Legislature of the State of Minnesota:

3606 Section 1. To aid in the construction of the main line of railroad of the Little Falls and Dakota Railroad Company, that is to say, a line of railroad to extend from Little Falls, in the County of Morrison, by way of Sauk Centre, Glenwood and Morris to such point on the western boundary of the State as the said company may hereafter determine, six (6) sections of swamp lands of this State, to be ascertained in the manner hereinafter provided, are hereby granted to the

said company, its successors and assigns, for each mile in 3607
length of the said railroad.

Sec. 2. The said lands shall be taken from the swamp lands of this State, not otherwise disposed of at the time of the definite location of the said main line of railroad, lying in the counties through which said main line shall run and lying nearest the said railroad, but, in case there shall not be sufficient available swamp lands in the said counties to equal the six (6) sections for each mile in length of said railroad, in that case the said company shall be empowered to select from any other swamp lands of this State, not otherwise disposed 3608
of at the date of the definite location of the said line of railroad, sufficient lands to make up the full quantity hereby granted.

Sec. 3. Upon the filing in the office of the State Land Commissioner of a map showing the definite location of the said main line, there shall be reserved out of the swamp lands of the State, lying in the respective counties through which such line shall run, and nearest the said line, and which shall not have been previously otherwise disposed of, a sufficient quantity of lands to fill the grant hereby made. And upon the filing in such office of lists of lands selected by the said 3609
company, as hereinafter provided, to make up deficiencies, the lands described upon such lists or such portion thereof as may actually be required to make up such deficiencies, shall also be reserved from sale or other disposition, except as provided in this act.

Sec. 4. As often as any continuous portion of the main line of railroad, thirty miles in length, shall be completed as a first-class railroad to the satisfaction of the governor of this state, a quantity of the lands hereby granted, equal to six (6) sections for each mile of railroad so completed, shall be conveyed by the governor to the said company, its succes- 3610
sors or assigns.

Sec. 5. The grants herein contained are upon the express condition that the said company shall commence the work of constructing said main line of railroad within one (1) year after the passage of this act, and complete the same within three (3) years after the passage of this act; and in

case any part of such main line shall remain uncompleted at the expiration of three (3) years from the passage of this act, in that case all the lands hereby granted, appertaining to the then uncompleted portions of such main line, shall become forfeited to and become re-vested in the State without further act or ceremony; Provided, that all the lands hereby granted shall be subject to taxation as other land whenever they shall fall within the limits of an organized county or township.

Sec. 6. This act shall take effect and be in force from and after its passage.

Approved March 3, 1881.

30102

3614

DEFENDANTS' PROCEEDINGS.

Federal Building, City of St. Paul, February 2, 1903.

The hearing was resumed before the Examiner, pursuant to adjournment at the above time and place, all parties being represented.

Mr. Young. The defendants offer in evidence from the record in the suit of the United States vs. Northern Securities Company et al, now pending in this court, the following: 3615

1. The testimony of James J. Hill, taken at St. Paul at the hearing in October, 1902, and appearing in Vol. 3 of the printed record in said case, at page 663 et seq., together with all the exhibits which were introduced in connection with said testimony, save such as have been already introduced.

2. The testimony of Frederick Weyerhaeuser, appearing in said Vol. 3, at page 744 et seq.

3. The testimony of George B. Harris, appearing in said Vol. 3, at page 748 et seq.

4. The testimony of C. S. Mellen, appearing in said Vol. 3, 3616
at page 860 et seq.

5. The testimony of E. N. Saunders, appearing in said Vol. 3, at page 866 et seq.

6. The acts of the Legislature of the State of Minnesota constituting the charter of the Great Northern Railway Company, with the amendments thereto, appearing in Vol. 2 of the record of the case of the United States vs. Northern Securities Company et al, at pages 433 to 464, inclusive.

The same was marked Defendants' Exhibit D.

7. The acts of the Legislature of the State of Wisconsin constituting the charter of the Superior & St. Croix Railroad 3617
Company, which name has since been changed to that of the Northern Pacific Railway Company, together with the statutes amendatory thereof and appearing on pages 408 to 430, both inclusive, of Vol. 2 of the record of the United States case.

The same was marked Defendants' Exhibit E.

3618 8. Proceedings of the meetings of the stockholders of said company accepting the amendments to the charter and changing the name of the company, found on pages 430 to 432, inclusive, of Vol. 2 of said record.

The same was marked Defendants' Exhibit F.

9. The proceedings of a meeting of the stockholders of the Superior & St. Croix Railroad Company, now the Northern Pacific Railway Company, held on July 1, 1896, appearing on pages 370 to 379, both inclusive, of Vol. 2 of said record.

The same was marked Defendants' Exhibit G.

3619 10. The proceedings of a meeting of the board of directors of the same company, held July 8, 1896, appearing on pages 380 to 383, both inclusive, of Vol. 2 of said record.

The same was marked Defendants' Exhibit H.

Mr. Munn. The complainant reserves the right to determine later whether it will interpose any objections to these offers, and also whether it will call any of these witnesses for further cross-examination.

The hearing then adjourned until February 4, 1903, at 2 P. M., in the Federal Building, St. Paul.

3620

St. Paul, Minn., Federal Building, February 4, 1903.

The case was called for hearing pursuant to adjournment, and by consent of all the parties was adjourned until February 5, 1903, at 2 P. M.

St. Paul, Minn., Federal Building, February 5, 1903.

The case was called for hearing pursuant to adjournment. All parties were represented.

3621 The defendants offered in evidence the by-laws of the Northern Pacific Railway Company as amended October 7, 1902.

The same was marked Defendants' Exhibit I.

The defendants also offered in evidence the by-laws of the Great Northern Railway Company as amended November 25, 1901.

The same was marked Defendants' Exhibit J.

The defendants also offered in evidence a statement prepared by Mr. Edward Sawyer, assistant secretary of the Great Northern Railway Company, from the original records of the meetings therein referred to, showing the number of shares of the capital stock of the Great Northern Railway Company represented at each of the annual meetings of the stockholders in the years 1899, 1900 and 1901, and also showing the number of shares held by James J. Hill, John S. Kennedy, Lord Strathcona, D. Willis James, Samuel Thorne, George F. Baker, Johnston Livingstone, Jacob H. Schiff, Kuhn, Loeb & Company, J. P. Morgan & Company, Lord Mount Stephen and represented at such meetings. 3622 3623

Marked Defendants' Exhibit K.

Thereupon an adjournment was taken until February 7, 1903, at 11 A. M., at the office of the Special Examiner, New York Life Building, in the City of St. Paul.

St. Paul, Minn., February 7, 1903.

Office of F. G. Ingersoll, New York Life Building, 2 P. M.

The hearing was resumed before the Examiner at the above time and place. All parties were represented.

It is agreed that Exhibit E, referred to in Mr. Hill's Minneapolis testimony, introduced in this case by the complainant, are the articles of incorporation of the Northern Securities Company, and, being set out in the pleadings, the same may be omitted from the exhibits and need not be printed in this record. 3624

It is agreed that Exhibits F and G, referred to in Mr. Hill's Minneapolis testimony, and introduced here by the complainant, are two letters, the first being the letter of Mr. Hill dated November 30, 1901, and the second a circular letter of the Northern Securities Company, signed by Mr. Hill as president of that company, dated November 22, 1901. By agreement, the first is to be marked Complainant's Exhibit 11 and the last Complainant's Exhibit 10 in this case. 3625

It is admitted that the stock of the Great Northern Railway Company was selling in the open market between June 1, 1901, and January 1, 1902, at from $190 to $200 and upwards per share.

3626 It is admitted that between June 1, 1901, and January 1, 1902, no Northern Pacific common stock was in the market for sale.

It is admitted that on November 20, 1901, but very little of the Great Northern stock had been exchanged for the Northern Securities Company's stock.

It is agreed that the testimony of W. P. Clough, taken by defendant at the hearing in New York City, January 16, 1903, may be inserted by the Examiner in the printed record in this case immediately after the testimony of the witness E. N. Saunders.

3627 The defendants rest.

The hearing was thereupon adjourned until February 16, 1903, at 2 P. M., at the office of the Examiner, New York Life Building.

St. Paul, Minn., February 16, 1903.

The case was called for hearing by the Examiner at 2 P. M., pursuant to adjournment.

By consent of all parties the case was adjourned until February 23, 1903.

3628

St. Paul, Minn., February 23, 1903.

The case was called for hearing at 2 P. M., at the office of the Special Examiner, New York Life Building, all parties being represented.

Complainant introduces in evidence at this time, by consent, chapter 415 of the Special Laws of Minnesota for the year 1881.

The same was marked Complainant's Exhibit 31.

It is agreed that the map, which is a part of the thirteenth annual report of the Great Northern Railway Company, for

3629 the year 1902, introduced by the defendants, and marked Defendants' Exhibit C, is not included in the offer of Exhibit C, and may be omitted from the record in this case.

Adjourned until February 27, 1903, at 10 A. M.

3630

St. Paul, Minn., February 27, 1903.
Office of Special Examiner.

The hearing was resumed at the above time and place, pursuant to adjournment, all parties being represented.

It is admitted that prior to November 25, 1901, the by-laws of the Great Northern Railway Company (Defts.' Ex. J) provided that annual and special meetings of the stockholders were to be held in the City of St. Paul, Minnesota.

It is also admitted that the first meeting of the stockholders of the Great Northern Railway Company held after the by- 3631
laws were amended was held in the City of New York on the 2nd day of December, 1901, and that all subsequent meetings have been held in said city.

It is also admitted that at the annual meetings of the Great Northern Railway Company for the years 1899, 1900, and 1901, as shown by Defendants' Exhibit K, all the stock of said Railway Company was voted by Mr. Hill or Mr. Sawyer, under proxies held by them, except such stock as stood in their names individually and a few shares voted by small holders.

It is also admitted that prior to the amendment of the by- 3632
laws of the Northern Pacific Railway Company (Defendants' Ex. I), on October 7, 1902, section 1 of article II of the by-laws of said company provided as follows as to the terms of office and classification of the directors:

"The business, property and affairs of this company shall be managed and controlled by a board of nine directors until the annual meeting to be held in October, 1896, and from and after such meeting by a board of fifteen directors. Every director shall be, at the time of his election, or before accepting and qualifying as such director, a holder of record of at
least one share of the capital stock of the company; and, 3633
when he shall cease to be such holder of record, he shall thereupon cease to be a director.

"Until the annual meeting in October, 1902, the several directors shall be elected each to hold office for one year and until the election and qualification of his successor, and the term of office of each director heretofore chosen shall expire at the close of the annual meeting in October, 1897. The di-

3634 rectors to be elected at the annual meeting in October, 1902, shall be divided, in respect of the time for which they shall severally hold office, into three classes, to serve respectively for one, two and three years, and at each annual election thereafter there shall be elected for three years a number of directors equal to the number whose full term of office shall then expire.

"Each class shall be composed of five directors.

"Each director shall serve for the term for which his class has been elected, or until such time as his successor shall
3635 have been duly chosen."

All parties rest.

Testimony closed.

DEFENDANTS' TESTIMONY.

The following is the testimony of James J. Hill taken from the records in the suit of the United States vs. Northern Securities Co. et al, as the same appears in Vol. 3 of the printed record, at page 663 et seq., and introduced by defendants
3636 herein as original evidence in this case.

JAMES J. HILL, called as a witness on behalf of the defendants, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION.

By Mr. Young:

Q. You are the president of the Great Northern Railway Company?

A. Yes, sir.

3637 Q. You have been such since what time?

A. Since the organization of the company.

Q. Prior to the organization of the Great Northern Company, what corporation owned and operated the railways which I might say formed the nucleus of the Great Northern Railway system?

A. The St. Paul, Minneapolis & Manitoba Company owned a portion of them, the main portion.

Q. When was that corporation formed?

A. The corporation was formed under the charter of the 3638
St. Paul & Pacific, and was formed in 1879.

Q. That is, the St. Paul, Minneapolis & Manitoba Company?

A. Yes, sir.

Q. You were one of the original proprietors of the Manitoba Company, were you not?

A. Yes, sir.

Q. And at the formation of that company, in 1879, did you become connected with it in an official capacity?

A. Yes, sir, I was active in connection with it both before the re-organization of the St. Paul & Pacific and the formation of the St. Paul, Minneapolis & Manitoba Company, and afterwards as manager, vice-president and president. 3639

Q. You became president in 1882, I believe?

A. 1882 or 1883.

Q. As president of the Manitoba Company and of the Great Northern, will you state whether you have been acquainted with the operation and the policy of those companies, and to what extent you have been concerned in framing and carrying out the policy of the road?

A. The general business of the company, for the first years, 3640
was mainly left in my hands. The directors, almost entirely, were non-residents and later lived abroad. The business was left very largely in my hands. The policy of the company, the extension of its lines and the general methods were left with me, necessarily, because the directors were non-residents. Sometimes I felt the responsibility was quite heavy.

Q. Since the formation of the Great Northern Company, state to what extent you have been concerned with the operation and with the matters of traffic, matters of extension and the general policy of the road.

A. The general policy of the company has been largely, I 3641
might say almost entirely, on the lines recommended by me. At the present time we have more of our directors in the West and they visit the road more frequently than was the case formerly, and are better able to advise than were our former directors. The others were excellent, good men. I suppose mainly on account of their financial ability they were connected with the company, when its necessities were greater than they are now.

3642 Q. What was the mileage of the Manitoba Company when organized in 1879?

A. About 400 miles.

Q. That was situated wholly in the state of Minnesota, was it not?

A. I think when our party (myself and associates) bought the bonds, they had about 380 miles, and we completed 125 or something of that kind, which carried it over 500 miles at the time of the organization; but under the direction of the United States court we had been working for a year prior to that.

3643 Q. Were those lines wholly in the state of Minnesota?

A. They were all in the state of Minnesota, yes, sir.

Q. At what time did the Manitoba Company begin the construction of its road from Minot, westerly, towards the Pacific coast?

A. In the spring of 1887. During the year 1887 the line was extended from Minot, in North Dakota, to Helena, Montana,—something over 700 miles, I think.

Q. And when was the line completed to the coast?

A. In 1893.

3644 Q. In 1893?

A. It was commenced in the fall of 1889, and finished in 1893, probably in January. In 1893 the rails were connected on the Cascade range, and opened for traffic the following June.

Q. This line was built by the Manitoba Company, but was leased and operated by the Great Northern?

A. Yes, sir. It was thought best to have the one ownership of the main line through to the coast, and it came under the lease. The Manitoba stockholders preferred it that way, and I suppose they were entitled to say how they would have it.

3645 Q. Before undertaking the construction of the railway to the coast, to what extent did you acquaint yourself with the character of the country which it traversed and in the neighborhood of the terminus, and the sources from which the road must look for such traffic as it might obtain?

A. I visited and made personal inspection of various lines on the ground, examined the country and the soil, water and climate, and the company spent a very large sum of money in

examining the various locations; practically made examinations enough, from the international boundary line south to the Big Hole river, to enable us to make a model of the Rocky mountains. We spent, I think, over eight hundred thousand dollars in surveys before we did any work at all. 3646

Q. What was your purpose in making such extensive, minute survey?

A. The purpose was to be certain that we built upon the best possible location, that we secured the best line in regard to distance and especially in regard to grades. A great many lines in the older part of the country had been built and rebuilt, and we wanted to avoid that if we could. We wanted, in the first place, to get the best location possible. For instance, I remember something which impressed my mind very strongly. Between Philadelphia and the Alleghany mountains through to Pittsburg, the Pennsylvania was building its road, part of it on the fourth right-of-way. I wanted to avoid that, if I could. 3647

Q. Was there anything in the nature of the traffic which you expected to get, which made you give especial attention to getting low grades?

A. The traffic in that country to be developed—it was all to be developed—must come from the natural resources of the country. It was a country very sparsely populated, and no manufacturers, and likely to be none except in connection with lumbering, mining, possibly milling, and flour manufactured for local consumption and for export on the Pacific Coast. 3648

Q. What eastern-bound traffic, then, did you look for and expect to get from the Pacific Coast?

A. Well, from the entire line the traffic had to be what the country would produce. From the Pacific Coast, the present great item of traffic east-bound is, naturally, the lumber from the forests. They have large forests of very high grade timber. 3649

Q. Is that lumber a product that will bear a high rate for transportation in proportion to its bulk and weight, or is it something that must be carried at a low rate in order to find a market?

A. I remember when I went to the Pacific Coast, before our

3650 road was built there, the rate on lumber east was 90 cents a hundred pounds, and it was practically prohibitory. I called the representative lumbermen together. They thought a reduction of 25 cents a hundred would enable them to ship their lumber East, and if we could make a rate of 65 cents a hundred they would be able to ship their lumber East. But I remember saying to a gentleman who was with me at the time, that they could not pay 50 cents, in my judgment, and move any large amount of lumber. The rate we made was 40 cents a hundred, and that rate has continued, that is, it is
3651 the present rate. And that has built up considerable trade, a trade equal, or maybe a little more than equal, at the present time, to the west-bound tonnage. The west-bound tonnage, that is, the local supplies consumed along the line, was at first considerably in excess of the amount eastward, but the east-bound traffic has been very largely developed.

Q. What is the market, the principal market, for this lumber of the Pacific that you haul eastward, what territory?

A. Portions of it go from Washington to Newport News, to Portland, Maine, but the great bulk of it is in the interior of the West, north of the Ohio river and north of St. Louis;
3652 you may say through central Iowa, Nebraska, Kansas, and a good deal used in this state, North Dakota, Wyoming, Colorado, Montana, Utah, and a great deal goes to California.

Q. In order to give these low rates, which would enable the lumber to be shipped to an eastern market, what was necessary to be done in reference to getting return freights to your western terminus?

A. The rate or any rate that would pay the cost of moving a car from the eastern terminal to the coast, empty, to bring eastward a carload of lumber, would be prohibitory, and I think certainly a rate of 65 cents would be necessary in order
3653 to move cars west-bound, empty, for east-bound loads from the coast; it would be as much as 65, maybe a little more, because the service would be twice—would have to run two train miles to get one loaded train mile.

Q. State whether the Pacific Coast and the population reached by your lines there furnished a sufficient market for the commodities which is was necessary for you to carry westward in order to give low rates eastward on your line.

A. At the time the road was completed, and for a short time after, the west-bound merchandise furnished more than enough empty cars to move the lumber east, but within a short time (two or three, or at the most, four years) the lumber trade had grown very rapidly, and the Alaska trade sprang up, and that furnished a larger west-bound movement, increased the west-bound movement; Honolulu increased the west-bound movement; and to some extent in 1896, by making very low rates, we were able, for the first time, to take American rails to Japan. 3654

Q. Just a minute, Mr. Hill. I was speaking of the market on the coast in our country; I am coming to this Oriental trade. I will ask you another question. 3655

A. Well, answering the one led to the other. I will answer your question briefly. The market on the coast, when the road was completed, was more than sufficient to furnish empty cars to move the lumber East, because the lumber had been moving at 90 cents a hundred, and there was little demand for it, and little knowledge of what it was; and by building it up, by seeking markets for it and making a low rate, we developed the lumber trade very fast, faster than the merchandise trade of the people of Washington, even with the addition of Alaska and Honolulu. 3656

Q. What steps did you then take? What markets did you seek for west-bound traffic on the line?

A. Well, we took every step that we thought would result in developing the trade. I sent men to Japan and China and kept them there, one man for over a year; his business was to get a manifest of every ship that entered or left a Chinese or Japanse port, as far as he could; to find what the exports and the imports of those countries consisted of, and where they went. Afterwards we sent one of our traffic representatives, and kept him there for a time. We also had men in the East, and wherever there was any business or likelihood of business. 3657

Q. Mr. Hill, I wish you would go on now and state in a general way the growth and development of this oriental business and traffic; what steps you took to secure transportation across the Pacific ocean; and also what connection or relation, if any, there was between the building up of this

3658 oriental commerce and the purchase of the Burlington road, or the stock of the Burlington road.

A. We found that the lumber supply of the United States east of the Rocky mountains and north of the Ohio river was becoming more and more dependent upon the Washington and Oregon forests, and that the time was rapidly approaching when the states that theretofore furnished the lumber for that region would not be able to furnish lumber enough to meet their own consumption; as, for instance, Michigan. Michigan furnished for a long time the bulk of the lumber
3659 going into the states east of Lake Erie or east of Detroit, and also the large market in Chicago and west of Chicago. I think it is reasonably safe to say that Michigan does not furnish today as much lumber as she consumes. I have given a great deal of attention to that matter, because at the time we considered building the road and when I first went to the Pacific Coast, if we could not carry that lumber to market there was absolutely nothing else for us to carry and no use in building a road there. I felt, after making a thorough examination of the lumber trade of the country, that it was only a question of time when that would be the source from which all
3660 the northern lumber would have to be supplied, or practically all; and the result has shown that the time when such will be the case is much shorter than I had anticipated. But in order for that lumber to move, it must be moved at a low rate; and in order to make a low rate you must have a large tonnage, and you must load your cars in both directions. That carried us to investigating the different markets to which we could send anything that was made in the East. In 1896, in the fall, we had just closed an agreement with the Japanese General Steamship Company to put on a line of through steamers running to our terminal at Seattle, in connection
3661 with our road; and the conditions of the contract were such as to enable us to make a rate from the East to the Orient. I remember when those men were present with us. Some of them were interested in securing rails for their railways. I asked them where they were going to get their rails. Well, they thought they would either get Belgian rails or English rails. The Belgian rails would come from Antwerp, the English rails from Middlesboro. I asked them, as they were going

to stay here a day or two, to let me see what could be done for 3662
American rails. I immediately cabled to my friends in London and got quotations for Antwerp and Middlesboro rails and the best charters to Yokohama. I remember that the rails could be laid down at about $29, the English or Belgian rails. I telegraphed to Chicago. The time was rather a quiet one in American manufactures, especially with the rail mills (the Joliet and one or two others were about closing down), three or four weeks before election, and possibly they were a little anxious to keep their mills running. I told them if they would make a rate of $19.50, we would give them a rate of eight dollars a ton—of 40 cents a hundred—from Chicago 3663
to Yokohama, which would be $1.50 a ton lower than the English or Belgian quotations. After some hesitation they made the rate and got the contract for 15,000 tons. That is one case. The cotton business: Some Japanese were passing through. The men I had out there reported the amount of cotton spun in Japan and the fact that the cotton came—the raw cotton—came mainly from India; a short staple cotton, which made an inferior yarn and sold at a low price. I got these gentlemen to try a small shipment of American cotton, with the guaranty, if it did not prove profitable to mix our 3664
long staple with their short staple of India, that I would pay for the cotton. The result of that was very satisfactory. The cotton trade has grown very fast, both raw and manufactured, but especially raw cotton. We have chartered ships to run to Honolulu, and make low rates there. The rates we made and the rates we are making now are very low. We make a rate from Minneapolis to Hong-Kong, or from St. Paul or any part of the state here to Hong-Kong, that would enable them to ship flour, if the Chinamen wanted to use flour or were able to buy it (they are rather poor over there just now, and have to be content with millet, they can't buy flour). In 3665
carrying this business forward we were soon brought to a point where we realized that the rates, in order to build the traffic upon a permanent basis, must be permanent, or reasonably so. We found in going to the south for cotton,—Texas cotton going to Galveston, and the Gulf states cotton going to New Orleans, that it went at different rates, and went from New Orleans to foreign ports at such rates as the ships were in-

3666 clined to make, according to the supply and demand for tonnage. We found that it was necessary for us, in order to be on a permanent basis, to have more than a joint rate, to have more than a joint tariff, which might be withdrawn at any time. We could not build up a great permanent business, extending across the continent and even across the ocean, on the basis that tomorrow the rate might be changed or the party with whom we were working to reach the different points of production or consumption had some other interest or some greater interest elsewhere. It was necessary in doing this that we should have some reasonable expectation that
3667 we could control the permanency of the rate and that we would be able to reach the markets. In other words, if the man producing lumber on the coast, or cattle on the ranges, or ore in the mines, could not find a market for it and if we could not take it to a market that would enable him to sell his stuff for a profit, he would have to stop making it. That was the line we worked upon, and that was the reason we felt called upon to put ourselves in a position where we could control access to the markets for him and access to the production for the west-bound. The Burlington reaches, more
3668 than any other road in the country, I think, these particular conditions; I think probably as much as all the other western roads put together.

Q. In that particular, as to the places which it reaches, what are the distinguishing features of the Burlington, as compared with the other roads; what points does it reach?

A. Well, if you will commence in the West, it connects with the Northern Pacific at Billings; it reaches Denver; it reaches Lincoln and Omaha, Nebraska; coming east to Des Moines and to Burlington, and going south to St. Joe, Kansas City and St. Louis; and then you may commence at St. Louis, and it
3669 reaches every town between St. Louis and the Twin Cities. It reaches Chicago, Peoria, Galesburg, Aurora—all those large points in Illinois. I had the figures and probably I might be able to find them. It reaches a very large percentage of all the manufacturing interests in the state of Illinois and Illinois is a large manufacturing state.

Q. What are the principal markets in the West for the cattle that are brought over your line, from the ranges?

A. Well, the principal markets in this country, over all 3670
lines, are Omaha, St. Joe, Kansas City and Chicago.

Q. All reached by the Burlington?

A. By the Burlington.

Q. As for this ore from the mines, that is shipped eastward?

A. Well, the Burlington runs to Denver and has connection over some road to Colorado, but Denver and Pueblo are the principal western terminal smelting points.

Q. Omaha?

A. Omaha, Kansas City, Aurora (Illinois), and the Black Hills. I think, outside of the copper smelting in Montana, 3671
those points cover three-quarters of the smelting in the United States.

Q. What advantage does the Burlington give you in regard to obtaining cotton for shipment?

A. The Burlington, at St. Louis and Kansas City especially, connects with all the southern railways reaching the cotton fields. To illustrate, Mr. Ripley, president of the Atchison, a few weeks ago told me he found they could make more money loading their cars that went down to Texas and back to St. Louis with cotton than they could in hauling the cotton to San Francisco. They would rather haul it up to St. 3672
Louis in the return cars and give it to us and let us take it abroad, because they had to haul the car that took it to San Francisco back empty. They had no lumber to bring back, and we had lumber to bring back, for every car we carried. So that the question is one that depends on the low rate, on the bulk of the traffic, the density, the amount of the traffic and the ability to load in both directions. It would seem rather strange that we should take cotton from Texas to Puget Sound (I think Puget Sound last year carried 75 per cent of all the cotton that left the Pacific Coast, and it is the farthest port 3673
from the cotton), but the conditions are such as to enable us to carry it there.

Q. Mr. Hill, when was your first shipment of cotton to Japan, or when did that traffic there begin to be of any consequence; in what year?

A. Well, I would not say whether our first shipment was in 1895 or in 1896. At first it was small. After the Cuban war

3674 commenced and the vessels were taken for transports, I remember that it was very much curtailed for want of tonnage. Sometimes within a week we would refuse fifteen or twenty thousand bales, for we had no ships to carry them.

Q. What advantage, if any, did you expect to derive, and have you derived, from the Burlington purchase in regard to the supply of coal for the country traversed by your line?

A. On the west end we have a local supply of coal. On the east end the coal in the past has come from Pennsylvania, West Virginia mainly, and some from Ohio; but during the season of navigation of 1901-2, and commencing with 1900,
3675 the difficulty in getting coal from Pennsylvania mines up to Lake Erie was very great. It was first quite apparent in 1900. In 1901 it was impossible for us to get our full supply of coal. In fact, in both these years the contracting miners were unable to do this because at the same time they were our own steamers, and could, in an emergency, bring the coal from Lake Erie ports to the head of Lake Superior; we were willing to take it at the head of Lake Superior or at Lake Erie ports, and we were unable in 1900 to get our full supply of coal. We had to bring coal from the south,
3676 and bring some of it through all rail, that is, from the East. Last year the situation had grown worse. While the railroads were unable to bring coal for our own consumption, they were also unable to bring it for domestic use, and they were unable to do this because at the same time they were unable to supply the furnaces on their own lines. Furnaces within a hundred miles of the coke ovens were cold all last winter for the want of fuel, because the railroad companies had absolutely reached the capacity of their facilities. Now, that was, I think, not the capacity of their ability to haul it from one point to another, but they could not move it. I made
3677 as close an examination of the general situation as I could, and I came to the conclusion that it was because the business could not be moved at the terminals. It was like the hour-glass—the opening was not large enough to run it through in the time necessary, and that was shown by the fact that the car movement had gone from thirty miles a day to twenty miles a day in ten years,—the average movement of cars; so they didn't move the cars. This year—1902—the case is much

worse, I think. Speaking for the Great Northern Company, 3678
at this time we haven't missed a solitary load that we could get, and have kept a man traveling from the mines to the railroad offices trying to get the cars, and we are now well on into October and we have not got half our order of coal up the lakes. And that applies still more, I understand, to coal for domestic consumption. But that was a matter we saw (and I have spent a great deal of time investigating coal matters; used to be engaged in the coal business; I brought to St. Paul the first coal ever sold here), and naturally the coal supply is an important one, and I felt that unless some-
thing were done to secure a supply of coal here in the North- 3679
west there would be a coal famine this winter and no way to avoid it, and every year hereafter it will be greater and greater and no amount of work can avoid it, because the people down in the older states, Pennsylvania and Ohio, will see that their own demands are supplied before it comes away out here.

Q. You have been speaking of bituminous coal.

A. Yes, sir, bituminous coal. Anthracite coal is used in the cities, but as long as people have bituminous coal they can live; they can get along without anthracite, and they will be 3680
very glad to get bituminous coal before they are done. The coal situation of the Northwest is a very serious one. I think it is one that is very little understood by the public.

Q. Wherein would the purchase of the Burlington shares which was made, and the control thereby given of the Burlington road, be of benefit to your road and to the country which your road traverses, in helping them to a better supply of bituminous coal for fuel or for domestic use or for manufactures or other purposes?

A. To begin with, the Burlington road has a very low grade down the Mississippi river,—a water grade, 16 feet to the 3681
mile, and can carry with a train of properly equipped cars, well designed for the purpose,— a heavy locomotive can carry a modern boat-load on a train.

Q. How does that compare with the capacity of other roads into the coal fields?

A. I think a Burlington locomotive could haul, for instance,

3682 as compared with the Chicago-Northwestern, three times the load; or, to put it in another shape, I am sure that the Northwestern, coming up by way of Madison and Elroy, the Burlington would move a hundred thousand tons of coal with one-third of the train miles necessary on the other line.

Q. What bearing has that capacity of the road to haul so much heavier trains upon its ability to carry at a low rate, and consequently the furnishing of this country with coal at a reduced price?

A. Coal at a low price is a necessity. The people in the
3683 northwest would have to abandon the country for five months in the year if they could not get coal at a reasonable price; and they cannot get it from the East at any reasonable price. The time has come when the East cannot supply us, and then they have to go to St. Louis or the country between us and St. Louis for the supply of coal. You can get some in Iowa. The Iowa coal is not as good as the Illinois coal, and the northern Illinois coal is not as good as that further south.

Q. Perhaps you didn't get my question, Mr. Hill. I am asking what bearing the fact that the Burlington road can carry so much heavier train-loads than other roads, has upon the
3684 question of the rate at which it can carry and the price at which the coal can be sold here and in the country traversed by your road?

A. The load it is able to carry determines the rate, and the rate on the coal is more, in any event, than the cost of producing the coal at the mine; the importance of the rate is, therefore, very manifest. It fixes the price at which the coal can be sold in the Northwest here. And, again, there was a further reason for buying the Burlington, namely, that the coal may be loaded on cars and the situation controlled so that when cars are in demand we may furnish our cars or
3685 they may furnish theirs and let the cars go through to their destination in Minnesota or in Dakota without unloading the coal and breaking it. Every time it is handled it interferes with the quality of the coal. The main point, however, is our ability to control the movement of coal at all. We bought, so that we might supply coal, if the coal miners in Illinois were at any time unwilling or unable to supply coal at reasonable prices—we hoped they would always be so willing—

but if not, we have, through the Burlington people, bought 3686
twenty-five or thirty thousand acres of coal land in the best part of Illinois, and for the purpose of extending or reaching more into the coal fields, the Burlington bought the Jacksonville & St. Louis, about 100 miles.

Q. Whereabouts does the Burlington road reach the coal fields of Illinois, in what part of the state?

A. Well, it reaches the coal fields of Illinois on their northern extremity, and through its lines and this Jacksonville & St. Louis it reaches to the southern limit of the coal field, down at Centralia or southeast of St. Louis.

Q. How extensive an area are those coal fields of Illinois, 3687
as compared with others that are reasonably accessible from this point of the country?

A. Well, there are no others reasonably accessible, unless you may so call the few pockets in Iowa, and they do not begin to supply—I don't imagine they supply 15 per cent of the consumption of the state of Iowa today.

Q. Then, practically, these coal mine fields of Illinois are what we shall have to almost entirely depend upon in the future in this part of the country?

A. They are the nearest by far to this part of the coun- 3688
try; and, with the low grade of the Burlington road and the physical conditions under which the business may possibly be done, it will furnish the cheapest and only certain supply of coal that this country can rely upon, unless you are willing to pay a price that will bring it. If you have money enough you can bring coal here. But I am speaking of bringing coal here in competition with the ordinary markets East and West under the rule that coal is handled. Coal in this country has, in any event, to come a long way.

Q. Mr. Hill, I desire to ask you in regard to the coal fields of the state of Washington.

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A. There are large coal fields in Washington.

Q. I will ask you another question: How far east can that coal be profitably carried?

A. The coal fields in Washington would come half way across that state. They are mainly located on the western coast, or west of the Cascade mountains; they would come half way across the state of Washington, or as far as Spokane

3690 Falls. Spokane Falls is about the same distance from here as is Boston—very little difference; so that it could not come in this direction very far. East of there, there is some coal, excellent bituminous coal, in British Columbia. That is 1,300 or 1,400 miles from here, nearly as far as to Spokane Falls. The coal from east of the Rocky mountains is, much of it, the same class as the Illinois coals, but the distance is twice or twice and a half as far as it is to the Illinois fields, and there is no population there to consume anything that would load these cars back. Now we are working up an iron ore trade with St. Louis. Within the last week we had advices of sev-
3691 enty-five or a hundred thousand tons of iron ore to go, through the winter, from the iron mines of Northern Minnesota to St. Louis. Coming back the cars will be loaded with coal. The fact that the coal has to come north, or that there is coal to come north, makes it possible to make a lower rate on the iron ore, and together the iron ore rate and the coal rate are both affected and are both reduced to the extent that we can load the cars both ways. This is a matter we have had under consideration; this iron matter we have had under consideration maybe for a couple of months, but it has culminated within
3692 the last week. We hope that it will reach 300,000 tons before spring.

Q. In reference to shipments of cotton especially, and other articles, what disadvantage was there in its being carried over separate lines under a joint tariff which you do not have, where it is carried with both roads under the same control,—for instance, in the matter of breaking bulk, or anything of that kind, shifting from cars?

A. Well, it is almost a necessity, if business is to be at all permanent, to be able to control the rate. The rates on the high seas vary according to the supply and demand for ships;
3693 and we, in order to take this business west, must be in a position to compete to take the traffic, one day with another. The line between here and St. Louis, if the Burlington was not in a position to work with us and to continue to work with us, might find some other connection that would give them a larger division than we could of the rate; they might find or feel that it was their interest to work with somebody else. Maybe they would give them some other business in lieu of

this, and we would have to hire some other road to haul that 3694
business from St. Louis here, at the best rate we could get. We could not control it except through the option of some other road which might at any time withdraw the rate; might at any time refuse to make a joint rate with us, except on terms that would be prohibitory. And, in that way, we could not go very far. We would not be in a position to compete for that business. We must either take that business to the coast—we must take all the west-bound business we can get to the coast, or else we must advance the rate on the lumber. Now, outside of cotton—take nails, wire, articles of that kind —that business has grown to very large dimensions, but our 3695
rate is a very low one. From Lake Erie to Hong-Kong it is 45 cents a hundred, $9 a ton, on those commodities. But the demand for American steel at home makes it almost a matter of indifference whether they send it or not, and we have to look not only to cotton, but we have to look to anything that will furnish us business going to the west, whether it is going to the Pacific Coast or to Alaska, or to Honolulu, or to the Orient or Manila—anywhere; we must try everything. During the season of open water, during the season of navigation, we can make rates from Buffalo and the lower lake 3696
ports by way of Lake Superior on our own lines, but that does not reach to the south, and only takes the manufacturing districts south of the lakes during the season of navigation. A line reaching St. Louis and all the trunk lines of the south and the trunk lines of the east, between St. Louis and Chicago, puts us in a vastly different position; and that is the reason why it was of such importance for us to control the situation. We could not control it without controlling the access to the main centers. We could not control it unless we could give a market for the production of the line—products raised along our road—whether it was out of the mine, from 3697
the farm, or out of the forest. If the man who produced it could not sell it, he would stop producing. And that was the problem we had to meet, and with the Burlington we find ourselves able to meet it.

Q. As I understand it, Mr. Hill, by having control of the Burlington, that was obtained by purchase of its stock, freight originating on the Burlington or brought to it is either car-

3698 ried over that line or over yours and the Northern Pacific without changing cars, whereas, if it were the ordinary practice, in the absence of such an arrangement, there would be a change of articles from one car to another or the breaking of bulk. Now, what is gained in that particular by avoiding change of cars?

A. Well, the avoidance of changing cars is a decided advantage, but there is a greater advantage in uniformity of service and cars. For instance, we found ourselves face to face with this condition: our cars are larger than the cars of most of the roads. The cars we use in the Pacific trade,
3699 in order to carry a respectable load or a paying load of lumber or cedar, carry a large quantity. We found that the small cars of the Southern and Southwestern lines that come up here would hold, for instance, but little more than half our load. Many of the shipments, parties wanted them to be preserved—car number so and so kept separate, not to be mixed. One of our cars would hold 185 or 190 bales—

Q. Of cotton?

A. Yes, or 160 bales; and we found cars from connecting lines coming in with ninety bales. We could not put two into
3700 one; and one of their cars would only a little more than load half of the capacity of our cars. That would make us haul practically empty cars over the road. By controlling the situation we could send Great Northern cars to St. Louis and load them there, if the Burlington cars were not large enough, or we could transfer them here, because we are in a position to say what we wanted done.

Q. Mr. Hill, to what extent do the conditions that you have said surrounded the Great Northern Company and had to be met—to what extent did these same conditions affect the Northern Pacific Railroad Company?

3701 A. The conditions that would affect the Great Northern would, to a very large extent, affect the Northern Pacific, in a similar way. I would be unable to give the figures as to the effect on the Northern Pacific, but they would be very easily arrived at, as they would on the Great Northern. Except in the matter of coal, I happen to know that they are about in the same position for their supply of coal from the lakes that we are. They have got possibly a little less than half of their

coal purchase for the year, and I think there is practically 3702
no soft coal on the docks at Lake Superior to supply the domestic use of the Northwest.

Q. And as to the general traffic of the roads in the country traversed by them, the business afforded by that country and by the country at their terminals, state whether or not the roads are substantially in the same condition?

A. What would affect us would affect them in the same way, as applied to the same business, naturally.

Q. And is their business, to and from the coast, and their other business such as to put them in the same position with 3703
you in regard to the need of such purchase as that of the Burlington?

A. I think entirely so, and in fact I know that that is the case. Both the Northern Pacific and ourselves, as far as that business was concerned, would have to limit the eastward movement or else increase the westward movement in order to furnish the facilities. In order to do that we have got to compete with the Suez canal; we have got to compete with anything that floats on the high seas and it is a big undertaking, but we are doing it, and doing it successfully.

Q. With what line of transportation does your route, say 3704
from St. Paul to China and Japan, compete at the Oriental points which you reach, speaking generally?

A. We compete with not only lines of transportation, but with markets. We compete with goods. The goods are counted at their value laid down there, and the competition extends all the way through from the production, the transportation, the cost of laying them down.

Q. With what lines? In other words, from what countries?

A. Germany, Great Britain, as far as the production and transportation; with transportation alone, Norway and Swe- 3705
den; they do not produce so much, but they furnish a great deal of cheap transportation. And we compete, of course, with lines across the American continent, the Isthmus, the Panama route. It is hardly called competition, because the Suez canal is so much more effective that our competition with the Suez canal leaves the Panama route practically out of the question. The other is much more serious. And the rail

3706 transportation; take, for instance, traffic going from anywhere in Ohio (Ohio is a large manufacturing state) to go by Suez canal it would have to go down to the seaboard. The same thing from Scranton or from Bethlehem, Pa., or from Pittsburg or Harrisburg; have to go down to the seaboard to take the ship, and the same miles of transportation would carry it, if it was a season when corn—grain—is moving east from Chicago, would carry it in an empty car out to Chicago, and we could take it there and carry it to the Pacific Coast, rather than haul a car empty when we were going to bring
3707 that car back to Chicago loaded with lumber. In that way we make rates against the high seas.

Q. What lines are there on the—

A. Well, now, you ask me questions as to what lines. I was thinking of the larger competition. Then you come to the Southern Pacific and the Atchison and the Union Pacific, Northern Pacific, ourselves and the Canadian Pacific. Those are the principal competing lines across the continent. Some of the lines reach out as far as Salt Lake and have various connections there. May be other lines built. They have one now, I think, under construction from somewhere in southern
3708 California up towards Salt Lake. We are not sure they will continue to compete for the business. They may. We are entirely satisfied that they should. But whether they are able to compete for this traffic or not, we will be able to compete for it as long as we have a carload of freight on the Pacific coast waiting to come back; we can certainly afford to haul at a low rate to the Pacific coast, and we will be able to compete for it for a long time, and we will carry that traffic whether the others carry it or not. We are not competing with them; we are competing with the conditions that are made applicable through the Suez canal and through any pos-
3709 sible route to get it to the Orient. We have to meet whatever the conditions are, or else not do it.

Q. Mr. Hill, I omitted to ask you, when I was inquiring about the steps you took to develop this Oriental traffic, in reference to the causing of construction of some ships for that purpose, for that business.

A. A few years ago—say three years ago this fall—we found ourselves entirely unable to get tonnage to carry the

business going west. We had to refuse thousands and tens 3710
of thousands of bales of cotton. I think we refused between August and January fifty or sixty thousand bales of cotton because we could not get the tonnage.

Mr. Griggs: That is, cotton intended for Asia?

Witness: Yes, sir. And we started to build our own ships, and they are about ready to go into the water; the first should be launched in December.

Q. How do those ships compare in size with vessels in ordinary use—freight steamers?

A. They are the largest now afloat, I think, except the 3711
Celtic.

Q. What is her tonnage, do you know?

A. About 18,000. The tonnage of our steamships is 28,000—about 10,000 greater than the largest afloat.

Q. Those are to ply between your terminus and Oriental ports?

A. Yes, sir. There are now two 18,000 ton ships belonging to the Boston Company, running from the Pacific Coast—new ones, built at Sparrow's Point, making their first trip.

Q. Mr. Hill, are you able to state the comparative growth of that Oriental traffic since its inception up to this time? 3712

A. The growth has been very rapid. In some commodities more rapid than in others. Last year the increase was very large in cotton goods, both raw and manufactured, and in machinery; and in some other commodities it fell off. The oil, I think, was considerably reduced. The Batoum oil, by some arrangement with the American reducers, had that market largely, and we do not carry the oil we did.

Q. Taking the aggregate of the traffic, the total amount of it—

A. Well, I should say the year ending June 30, 1902, the business was more than twice as great as it was the previous 3713
year, ending June, 1901. We were in better position to do the business.

Q. Can you give us the quantity of cotton, in raw cotton or piece goods, that was carried in 1901 and 1902?

A. I can give it to you exactly, by the Great Northern.

Q. Yes, by the Great Northern we are speaking of.

3714 A. In 1901 the amount of cotton piece goods was 13,070 bales; 1902, 64,542 bales. Raw cotton in 1901 was 13,230,000 pounds against 41,243,000 pounds the next year.

At 12:35 the hearing was adjourned until 2 o'clock P. M.

AFTERNOON SESSION.

The witness, James J. Hill, was recalled, and his direct examination resumed as follows:

By Mr. Young:

3715 Q. What is the purpose and advantage of making those steamships of so large a size as you have testified to, rather than making more of them of a smaller size?

A. They are built in a very substantial way, and we felt it was necessary to go as far as we did in the most modern construction and to carry the largest load, in order that we might be able to make a low rate. We carry the cargo of five ordinary freight steamers with one crew, in place of five crews.

Q. That is, then, it was in pursuance of your policy of carrying a large volume of traffic at the lowest rate?

A. Yes, sir. The problem we have to meet is, in any event,
3716 a difficult one. We have to compete with the transportation of the whole world, and we cannot afford to do anything except the best that we can possibly devise.

Q. In the purchase of the shares of the Burlington road, was there any purpose or intention on your part, or so far as you know on the part of either of the Railway Companies or those connected with them, to restrain or hinder commerce between the states or among the states or with foreign nations?

A. That, I am sure, never occurred to us. The object was exactly the opposite.

3717 Q. What, if any, has been the effect of that purchase upon commerce between the states and with foreign nations? Has it restrained it, or otherwise?

A. It has very greatly increased it. It has increased it more rapidly than I ever have known commerce of the same extent to be increased in my forty years' experience.

Q. In the same time?

A. In the same time. It has only been in effect practically

a year, and in that year the business has more than doubled 3718
on the Great Northern Railway.

Q. What has been its effect on the local business of the road?

A. The increased tonnage eastbound, growing out of the increased tonnage westbound, has very largely increased the total tonnage. I think the total tonnage on the Great Northern Railway for the last year—the annual report will give the figures accurately—I think the increase is about 33 per cent. The foreign business has increased over 100 per cent, which is a very unusual increase in one year. And the effect of that, 3719
the increase of the entire business, has made a large increase in the revenue of the company.

Q. And what effect has that had in enabling you to reduce rates?

A. We have been able to reduce rates from ten to fifteen per cent in a year on the local business, between the Pacific Coast and the Twin Cities and Lake Superior. When I say ten to fifteen per cent I speak of business in a general way, and that is very nearly the actual reduction.

Q. What has been the effect of the Burlington purchase on the business of the Northern Pacific Railroad Company, as 3720
far as you know?

A. Well, I can only testify as to that matter in a general way. The same conditions would affect their road that affect the Great Northern and in the same way, because they are doing the same general business. Their rates have also been reduced, and their revenue has been such as to enable them to make this reduction, without any reduction in their dividends.

Q. Have they also had a largely increased volume of traffic following the purchase of the Burlington shares?

A. Yes, sir; very large. 3721

Q. What, in your judgment, will be the future effect of this common ownership of the Burlington shares upon the interstate and international traffic of the two companies? Will it tend to restrain the trade of the companies or to increase it?

A. To carry out the policy that has been uppermost in our minds from the time when we built the road, the general plan and purpose in building the road, building with low grade and

3722 in arranging for the business, if carried out, will very materially increase the business, increase the tons moved and enable the company to move the tonnage at lower rates, both interstate and state, foreign and domestic.

Q. At the time of the purchase of the Burlington shares, was there any purpose or intention to restrain or hinder the traffic of the Burlington road itself,—interstate traffic?

A. No, sir; none whatever.

Q. What has been the effect of that purchase upon the traffic of the Burlington road? Has it hindered it, restrained
3723 it, or has it increased it?

A. I think that the traffic of the Burlington road from Billings to the southwest has been very largely increased, and from here to the south the increase has been considerable.

Q. What is likely to be the future effect? Will it be to restrain or to enlarge the commerce of the road?

A. If the plan as contemplated is carried out, it should make a very large increase in the traffic. For instance, if the iron ore from Minnesota can find the furnaces in Missouri or southern Illinois, or down in that country where they get cheap coal, and bring back coal in the same cars, cars adapted
3724 to moving both, that business alone should run very soon into millions of tons. That is one. I know of no place where the business would not be increased; I know of no place where it would not be increased and benefited. I can imagine none.

Q. Why was it, Mr. Hill, that you took no steps for the purchase of the Burlington road or some other eastern connection prior to 1900 and 1901?

A. The earliest consideration of that question, which I recall, of a line to the south—and the Burlington was mentioned at the time—was in 1897. It was by some friends of mine in London. But we were just emerging from a period
3725 of business depression, and the undertaking was a very large one for the Great Northern Railway,—a very large one. It was thought that if two roads having the same general interest in the broad question of developing their local business would take it up, the burden would be very much less, and the Northern Pacific was hardly in a condition to take it up sooner than the time when it was taken up. Its earnings and

dividends were hardly established. While its earnings had 3726
been increasing quite rapidly, the company's recent reorganization left its credit somewhat on a different basis from the Great Northern, which had been paying dividends from its organization or commencement.

Q. Do you remember when it was that the Northern Pacific common stock first reached par in the market?

A. When it first reached par?

Q. Yes.

A. In the spring of 1901. I think it was rather a surprise to some of the shareholders at the time.

Q. In planning and carrying out the purchase of the Bur- 3727
lington shares, was it any part of that scheme, so far as you know, that the shares of the Great Northern and the Northern Pacific Companies, or any of those shares, should be put into a holding company?

A. That was no part of the Burlington transaction; it was not considered. I don't know that it was thought of. I know it was never discussed, and I don't think it was thought of or cut any figure whatever in the Burlington purchase. Some of the people connected prominently with the Northern Pacific recognized the advantage of a line to Chicago, and wanted to 3728
consider the purchase of another railway that was offered to them, or, as I understand, was offered to them if we would join. It would not answer our purpose. It practically did not reach anything except Chicago; did not reach St. Louis; did not reach the great markets and material that we wanted to reach and desired to reach, and it was not seriously considered. But the question of the Northern Pacific and the Great Northern ever being put into a common ownership was not thought of in that connection, nor until long afterwards.

Q. At the time of making the Burlington purchase was there any purpose on your part, or so far as you know on the 3729
part of your associates, or Mr. Morgan and his associates, of increasing your holdings of Northern Pacific stock so as to obtain a controlling majority of that stock?

A. At what time?

Q. At the time of making the Burlington purchase.

A. There was no effort made to increase the holdings of the Northern Pacific by the stockholders of the Great Northern

3730 that I know of, and I am very well satisfied had such been the case I would have known of it. In fact some of them had sold their stock as the prices advanced. As to Mr. Morgan's views about increasing his Northern Pacific, I don't think Mr. Morgan's people increased their holding of Northern Pacific up to or during the time the Burlington transaction was being considered. They could answer that question better than I can.

Q. I meant to ask you so far as you knew.

A. Yes, sir.

3731 Q. Do you remember the date when the resolution of the board of directors of the Great Northern Company was passed authorizing the purchase—

A. I couldn't give the exact date.

Q. —of the Burlington stock?

A. I couldn't give the exact date. It would be in the month of April.

Q. You were present at that meeting?

A. Yes, sir.

3732 Q. State whether or not a suggestion was made at that meeting that, in order to protect the Great Northern Company, the control of the Northern Pacific common stock should be acquired in its interest.

3733 A. As I remember it, one of our directors raised a question that inasmuch as the purchase of the Burlington stock and the creation of a bond to pay for it involved the joint and several liability of the entire amount of the purchase, it was a matter of consequence to the Great Northern to know that the Northern Pacific would not pass into the hands of people who might be interested in other directions, in developing in other directions or other sections of the country; and I remember I answered that with what myself and friends held at that time, and what Morgan & Company held we would have somewhere in the neighborhood of 35 or 40 millions of the stock out of a total of 155 millions, which was larger than is usually held in any of the large companies. I did not think at the time that it was at all likely that anybody would undertake to buy in the market the control of 155 millions of stock.

Q. At the time in April, Mr. Hill, how much common stock 3734
did you and your immediate associates hold in the Northern Pacific?

A. I should think, on the first of April somewhere from 33 to 35 millions. That is, however, an estimate, and I think a reasonably close one.

Q. Is that common stock?

A. Common stock.

Q. And about how much of that was held on the 21st of April?

A. Well, I don't know that it was not all held then. I 3735
know that on the 9th of May, after there had been a struggle, or we will say up to the 3rd of May, after prices had been put up to above par, 110 or 120, and it was actually demonstrated that there was an attempt to buy the Northern Pacific, I sent word to a few of my associates who were large stockholders, and they sold no more of their stock from that time. Some of them had parted with large amounts of the stock. I know that Morgan & Company, for a fund they had (about a million and a half), on the 2nd of May sold over a million dollars, probably a million and a quarter or more, of the stock. They thought that the market price was quite high 3736
and did not believe that anybody was trying to raid the property.

Q. In your statement as to the holdings on the first of April, putting it, I think, at thirty-five millions, did you include the holding of Morgan & Company?

A. No, sir. I recollect one gentleman who, I think, held three and a half millions, and he sold it all out before he received a telegram from me, He said he would rather have burned it than to have sold it. There were others who held large amounts,—and when I speak of large amounts I mean anywhere from $250,000 up to two or three million. 3737

Q. On the 5th and 6th of May the holdings of yourself and the gentlemen associated with you amounted, as I think has already been testified, to between 21 and 22 millions of common stock?

A. I think at that time the closest estimate I could make was about between 20 and 21 million.

Q. Between 20 and 21 millions?

3738 A. Yes. Afterwards I think it turned out to be a little more. That was on the 2nd or 3rd of May, I couldn't say which.

Q. And that holding continued?

A. They held from that time on regardless of what the price was.

Q. And the holdings of Mr. Morgan on the 1st of May and before they went into the market to buy, was about how much?

A. Oh, probably in the neighborhood of five or six millions.
3739 I couldn't say whether they owned it or whether it was held in their office for the account of other people.

Q. Mr. Hill, after the return of Mr. Kennedy in June, and when it was contemplated taking the stock of the Northern Pacific in the proposed holding company, what proportion of the stock of the Northern Pacific Company was it then expected would be taken into the holding company?

A. Mr. Kennedy returned from Europe early in June and I discussed the matter with him and with one or two (maybe three) other shareholders, I think four, three of whom owned Northern Pacific as well as Great Northern. One had sold his
3740 Northern Pacific, attracted by the high price. Following out the plan we had for a long time, of putting our Great Northern stock into one company, the question came up whether we should not put our Northern Pacific in as well. The Northern Pacific that we held at that time was something over 20 millions. Morgan & Company held about the same amount. They had bought in the market in the neighborhood of 15 millions of common stock, and they held something over 20 millions. Together our holdings amounted to about 42 million dollars, probably a little less than 42 million dollars. At the time I discussed that with Mr. Kennedy, after his re-
3741 turn, and with the other gentlemen, there was no conclusion, no definite conclusion, arrived at in regard to the Northern Pacific as I remember there was in regard to the Great Northern. That had been considered for a long time, although in view of what happened Mr. Kennedy said we must devise some plan to prevent hereafter such raids as have occurred.

Q. How soon after that was it that an understanding was arrived at that a holding company should be formed, large

enough to include the holdings of yourself and associates and Mr. Morgan and his associates? 3742

A. I think it was in the last half of August. It was during the month of August, is my best recollection. I know it was after Mr. Morgan returned from Europe, and he returned sometime in the early part of July.

Q. At that time what amount of capitalization was either agreed on or thought to be the proper amount for the proposed company?

A. When the matter was discussed with Mr. Kennedy and Mr. James and myself in June, I think that we thought a hundred millions would cover the necessity, provided that a large 3743
number of the shareholders of the Great Northern did not deposit their shares. There was also a good deal of hesitation; in fact, the formation of a holding company, in the first place, was discussed among a very limited number of Great Northern shareholders. The amount was comparatively small. It was the stock of those who had always been most active in carrying on the business of the company. But when it came to making a holding company that would hold the ownership of the stock held by these people, they all hesitated about forming any company to hold the shares of the 3744
Great Northern Railway in which all the shareholders might not be allowed to participate, if they so desired. And in that way it became necessary—it was decided, and it was decided early, possibly in June; it had been discussed at least a year before that. I know Mr. Farrer, of the firm of Baring & Company of London, was here and he said, "No matter what you do,—your company has always had the reputation of dealing with all the shareholders on the same basis,—no matter what you do, try and keep that." Everybody seemed to be of the same mind,—that all the shareholders might participate in any advantage that any shareholder might have, so far as re- 3745
lated to the action of those who were most active in the company's affairs. That involved the necessity of making the capital of the holding company large enough to take in the stockholders of the Great Northern, if they elected to sell their stock.

3746 Q. Taking that stock at the figures which had been mentioned, 180——

A. That would make 225 million.

Q. 225 millions. What additional sum to those 225 millions was considered necessary on account of the holdings in Northern Pacific stock of your party and the Morgan party?

A. After Mr. Morgan's return from Europe, I bought for myself and a few friends the bulk of his holdings. I think I bought 12 millions out of the 15 millions that he had purchased in the market at cost, and with what he held made the control of the Northern Pacific common stock an absolute ma-
3747 jority, which controlled the company after the redemption of the preferred. That would take some 48 or 49 million dollars of the stock to purchase the 42 millions of Northern Pacific common, and the additional amount that might be necessary —or rather, the amount, 225, for the Great Northern, with say 50 for Northern Pacific, carried it up 275. We thought at one time of making it 300, covering these amounts and some other properties that the Northern Securities Company desired to buy.

Q. Did you at that time take any account of what ought to
3748 be provided in case of your getting additional common stock for your preferred, on the retirement of the preferred?

A. That was considered. Those steps came one after another. They were considered, I should say, after the latter part of August, and prior to the organization of the company. One condition as it took shape called for a relative change in the plan of the stock, that is, an increase in the amount of the stock. I might answer that further, that Mr. Morgan, acting as he had been for the Northern Pacific for a great many years, since its reorganization, was very urgent that whatever was done for his shares, any other holder should have the
3749 same right. That had to be considered.

Q. In case of a retirement of the preferred stock of the Northern Pacific, to be replaced by common stock, if you had taken your proportion, you and the Morgan interest, your proportion of new common stock, what would have been the amount then of your holdings? You would have taken 75/80 of $42,000,000, I suppose?

A. Yes, sir.

Q. That would have brought you up to about in the neigh- 3750
borhood of 90,000,000, or about 80,000,000?

A. Yes; a little over 80; between 80 and 90.

Q. Now, what I wanted to get at was whether at this time, at the end of August, when you were fixing your proposed capital for the holding company, you took into account the increase of your holding which would or might result from a retirement of the preferred stock?

A. That had to be considered; it was considered.

Q. Now, if that was taken at 80,000,000—that was 115—it would be about 120,000,000? Oh, no——

Mr. Richards. 92 million. 3751

Q. It would have been about 92 millions?

A. But there was not 80 millions of the preferred.

Q. No, 75 millions of the preferred.

A. Yes.

Q. To 80 of the common. You would have had 15/16 that you could have taken?

A. Yes, sir.

Mr. Grover. 75/80.

Mr. Young. Well, that is 15/16. I was merely taking round numbers.

Mr. Griggs. 92 millions of the stock of the Northern Se- 3752
curities Company to pay for the common stock of the Northern Pacific, which you and Morgan would have had after the retirement of the preferred?

Witness. I could get at that with a pencil and a piece of paper; I haven't any on this chair. You can figure it out.

Q. It is nearly 82. That would bring that to something over 300 million. Now, what did you have in mind as to the disposition of the rest of that 400 million at that time, supposing you made it 400 million?

A. Well, I think up to possibly the middle of September 3753
it was hardly deemed necessary to make the capital over 300 million. I think that is substantially correct, because we were to offer the Great Northern shareholders the right to come in if they desired, but the market price was higher than the price we offered.

Q. The price offered was 180, I believe?

A. Yes, sir.

3754 Q. And what was the market price of the Great Northern stock during the fall and winter of——

A. I think it ran from 187 to 190 or 195. I don't think it has ever been 180 from the time the offer was made to the present time. The amount was made large enough to provide for— I remember the question asked of me and answered a number of times: make it large enough to cover what you may have to do, so you won't have to amend your articles. I am testifying up to, I should say, the end of September.

Q. The end of September, 1901?

3755 A. Yes, sir.

Q. The amount actually fixed at 400 million was arrived at when?

A. Oh, I think some time in October. It might have been the latter part of October. I have had a great many things to think of, and it was in the office in New York and I have no opportunity of going back to refresh my recollection as to the actual date. I am testifying from my best recollection.

Q. What was the purpose after the purchase of the Burlington Company and after the very large purchases of Northern Pacific stock made in the Union Pacific interests,—what was
3756 the purpose after that time of you gentlemen who promoted the Northern Securities Company in forming that company and putting into it a majority of the stock of the Northern Pacific Company?

A. We were particularly anxious to put a majority of that stock where it could not be raided again as it had been. We wanted to put it in a corporation that was not a railroad company,—a company that would hold it as an investment, and the larger the company the more difficult it would be to secure a majority of it. Then, again, a reason why we preferred an investment company: railroad charters, I think I may say al-
3757 most entirely, are drawn or granted on terms that do not permit railroad companies to buy the shares or own the shares or investment companies. Railway companies, under certain conditions, can buy the shares of other railways, as a means of consolidation, or they might buy the shares of a road that they would otherwise build. We were advised that we would be safer with the shares held by an investment company, the stock of which could only be held by individuals or by cor-

porations that were not railway companies, and to that extent 3758
we would be more free from such raids by interests that were anxious to destroy or restrict the growth of this country,—such raids as had been made by the Union Pacific interests, so-called.

Q. What injury did you consider was likely to result to the stockholders of the Great Northern Company or the stockholders of the Northern Pacific Company, or to those corporations, if a majority of the stock of the Northern Pacific or a controlling interest in that company should be obtained by a hostile railway interest?

A. With the Northern Pacific as a half owner in the shares 3759
of the Burlington and responsibility for one-half of the purchase price of these shares, the transfers of the shares of the Northern Pacific or the control of the Northern Pacific to an interest that was adverse or an interest that had greater investments in other directions, the control being in the hands of companies whose interests would be injured by the growth and development of this country would, of course, put the Great Northern in a position where it would be almost helpless, because we would be, as it were, fenced out of the territory south which produces the tonnage we want to take west 3760
and which consumes the tonnage we want to bring east, and the Great Northern would be in a position where it would have to make a hard fight—either survive or perish, or else sell out to the other interests. The latter would be the most business-like proceeding.

Q. What would be the effect of such an acquisition by a hostile interest on the minority shareholders in the Northern Pacific?

A. Why, it would practically put the control of the Northern Pacific interest in the hands of people who were hostile to its growth or development. 3761

Q. Exactly.

A. The measure of injury would be destruction.

Q. And its effect on——

A. It would destroy the entire plan upon which the whole enterprise was originally designed and carried out, as far as it had been carried out.

3762 Q. That is, your plan of building up a great interstate and Oriental traffic?

A. Yes, sir; and the conditions under which that business should be done, because the other lines could not—it was a physical impossibility for them to carry at the rates that are necessary to carry it, and the rates that we must make, without making a positive loss on the business.

Q. So that, in effect, they would not only deprive you of that commerce, but they would destroy the commerce itself?

A. Destroy the commerce itself.

3763 Q. It would not be done?

A. It could not be done. I can show it in a moment. The great interests centering in San Francisco have no return cargo from the west except fruit, and that is carried in a special service, in a special car; that car is not intended or designed to carry this Oriental or sea-going business at all; and for every car we can get to the Pacific coast we have a carload of lumber ready, loaded by the shipper and unloaded by the consignee, and all we have to do to it is to hitch to it and haul it; and the conditions are entirely different. We have no objection to their getting any rates that we make.
3764 They have the right to make any rate that we make. We cannot prevent that, and do not desire to. But we must, in order to carry this business, meet the competition of the Suez Canal and the high seas and the entire world, and we are prepared to do it and we are doing it. And that we are doing it successfully is shown in the enormous increase in the business in the last year.

Q. Was there any other motive, Mr. Hill, in having the Northern Securities Company acquire a majority of the stock of the Northern Pacific Company—was there any other motive in that than the intention to defend and protect the in-
3765 terests of the stockholders and this enterprise which you had undertaken?

A. The object and the intent was to defend the property that otherwise would be destroyed, both of the Northern Pacific and the Great Northern. When I say *destroyed*, there would be something left, but the main plan would be destroyed; there would be something left, but the property

would be incapacitated from doing what it was intended to 3766
do and what it was quite able to do.

Q. Was there any intention or purpose on your part or on the part of anyone else, so far as you know, in forming the Northern Securities Company, to restrain trade or commerce among the states or with foreign nations, or at all?

A. There was absolutely none whatever, and that view of the case never occurred to us; on the contrary, it was constantly in our minds that it was going to be the most effective way of developing and increasing commerce between the states and international commerce. And it was necessary, if 3767
we were to bring this enormous business to the eastern markets,—it was necessary that we should pretty soon be able to reach some point where there was a market, where people would buy our products, and in the growth of that business our increased earnings would put us on a firmer basis and in a better position to make lower rates on the local traffic of our line. The average rates on the Great Northern Railway today are much lower than the average rates on the other transcontinental lines. I think the average rate on the Atchison would raise our revenue five and one-half millions annually, and on the Union Pacific would raise our revenue five and a 3768
half millions, maybe six.

Mr. Griggs. That is, if you carried as much as you do now?

Witness. Just carrying the same amount we do now. If the amount we carry now was carried at the average rate of those southern lines, we would have from five to six millions more money than we have. But by increasing our tonnage and by increasing our revenue we have been able to reduce our rates, and we expect to go on reducing our rates for the same reasons. If we carry that out I see no reason why our rates cannot be materially reduced in the future. We have
little difficulty in earning our seven per cent, which is our 3769
dividend, and we don't expect to raise it. Now, as we cheapen the cost of transportation and increase the tonnage, what have we to do with it? We will put it on a safer basis by reducing the rates. And I suppose the public are more interested in low rates and good service than they are in any other attitude of the situation.

3770 Q. Mr. Hill, at the time of the formation of the Northern Securities Company or in the planning or making of it, did you have any intention or purpose of destroying or lessening the competition between the Northern Pacific and the Great Northern Railway Companies, or did any of the other persons or companies have any such intention, so far as you know?

A. The idea never occurred to me, and I never heard it discussed,—and all matters in connection with the transaction were frequently and fully discussed; I never heard that attitude of it presented.

3771 Q. In point of fact, has the formation of the Northern Securities Company caused or resulted in any lessening of competition between the Great Northern and Northern Pacific Railway Companies?

A. I don't know that it has affected it in the least. Take the interstate business of the two roads, the Northern Pacific and the Great Northern, from one end to the other, and there is very little of that business that could be affected by the two companies in any way without the co-operation of other companies. The amount of business is very small that is not affected directly by various carriers and conditions. So that
3772 if the Northern Pacific and the Great Northern should set their minds and exercise all the ingenuity of their traffic departments to affect the business, I am quite sure that they could not affect ten per cent of it. I think it would be very much less than that. But I am quite sure they could not affect in any way ten per cent of it.

Q. As a matter of fact, Mr. Hill, has anything been done between the two companies for the purpose of reducing competition at any point?

A. Nothing whatever. I think the competition is just as free and as full as it has been at any time in the past twenty
3773 years.

Q. So that as far as you know, Mr. Hill, is either road operated less independently of the other since the formation of the Northern Securities Company than it was before?

A. If there is any difference, I think they are a little more independent of each other. For instance, the Northern Pacific runs three passenger trains from here to Lake Superior; the Eastern Minnesota runs two. The Eastern Minnesota pro-

posed that they would give the Northern Pacific the right to 3774
choose which hour of the two they would start, if they would divide the time. I think they both started a train at the same time. They said, "Now, the through passengers don't need two trains, but if you will start yours at one time we will start ours at another." The Northern Pacific said, "No, we have got so much local business to take care of, we have got to run ours on our own basis," and that was a complete answer. I speak of that because that is the only occasion that has ever come to my mind where there was anything looking that the roads might come together, and the Northern Pacific 3775
felt that they had local business to take care of and would rather keep their train on the same time that they had had it. But that is not an uncommon thing to take up between any railroads, however strong the competition or how light it is—the time of starting and arriving of trains.

Q. Did the Great Northern Railway Company or its board of directors or any of its officers, so far as you know, have anything to do with the organization or formation of the Northern Securities Company, or was it an affair of the stockholders alone?

A. Neither the Great Northern Company nor any of its 3776
officers as such had anything whatever to do with it, not any more than the most distant railway corporation in the country. Absolutely nothing. The matter of forming the Northern Securities Company was purely of the shareholders and limited to a very small number, I think I am safe in saying not to exceed 11 out of 1800.

Q. Who were those eleven, more or less? You can give the names right here.

A. In the order in which they were most active I would probably have to put myself, and Mr. Kennedy, the representative of Strathcona, and Mount Stephen, Mr. John W. 3777
Sterling, Willis James, Samuel Thorne, Johnson Livingston, Col. Lamont, Oliver Payne, Edward Tuck, George C. Clark, George F. Baker. I think now I have got there most of them.

Mr. Clough. Mr. Cannon.

Witness. Mr. Cannon knew of it but his holding was small. He probably held four or five thousand shares.

3778 Q. About what was the general holdings of these gentlemen in the Great Northern, as you remember?

A. Between 33 and 35 millions.

Q. Out of a capital of 125 millions?

A. Yes, sir. I have a list of the men somewhere, if I could put my hand on it. I have a list of the men, the names, that I undertook to see, and I checked them off as I saw them, and the amount of stock they held. I may be able to find that list. I saw it within a few months. It was a list of the parties I saw, and I think there are eleven names on that piece
3779 of paper of men whom I have seen and with whom I have discussed when we were arranging to go on and form the company.

Q. What corporate action, if any, was taken by the Northern Pacific Company or by any of its officers, so far as you know, in forming or organizing the Northern Securities Company?

A. I don't know that there was any and I don't know any they could take as a company. The Northern Securities Company simply bought the stock of the Northern Pacific from the people who owned it, and the corporation had nothing to say
3780 as to the disposition of the stock, the corporation didn't own any stock, or at any rate it didn't sell any stock to the Northern Securities Company.

Q. Shortly after the formation of the Northern Securities Company, you yourself transferred to it, sold to it, a large amount of Great Northern stock and Northern Pacific stock, did you not?

A. Yes, sir.

Q. And large amounts were sold in like manner by other holders?

A. Yes, sir.

3781 Q. In your own case, state whether or not your sale or transfer to the Northern Securities Company was an absolute, out-and-out sale and transfer, or whether there was any understanding or condition or trust or anything of that kind connected with it.

A. The sale by myself and by everybody—and as the president of the Northern Securities Company I know the conditions upon which the purchases were made—they were abso-

lute purchases, as absolute as was possible to make them, 3782
and outside of any condition or trust or implied agreement or anything else. They were just as free to sell the stock—that is, the Northern Securities Company is the absolute owner of the stock and free to sell it and dispose of it or burn it if it sees fit.

Q. Was there any understanding as to how the Northern Securities should vote that stock?

A. None whatever. It is a matter for its own consideration. Not any more than if you bought it, or any other purchaser. There was no condition of any kind attached to the 3783
sale of the stock. They bought it outright and paid for it, and there is no agreement, direct or implied, in existence or ever was in existence or ever contemplated.

Q. In the formation of the Northern Securities Company, was there any agreement among its promoters or any of them, including yourself, by which they or any of them bound themselves to transfer their stock in either railway company to the Northern Securities Company, when it should be organized?

A. There was no agreement of any kind. When I discussed the matter with these gentlemen they said, "All right, go 3784
ahead, we will put ours in"—each man speaking for himself, and I think I saw them all separately, with one exception. I saw Mr. Kennedy and Mr. James together; both happened into my office at the same time, as was a very common thing with them. Possibly I saw Mr. Thorne and Mr. Clark together. The others I saw separately. There was no agreement, an hour—a minute—before any shareholder of the Great Northern transferred his stock he was at liberty to turn round and go away with it.

Q. And in the purchases made by the Northern Securities 3785
Company from the Great Northern stockholders, state whether or not such purchases have been the result of any agreement among several shareholders, or whether they were separate transactions with each shareholder who sold his stock.

A. Each sale covered nothing but the sale of that particular stock. Each shareholder acted for himself at all times. And after the company was organized the offer was made to take

3786 the shares of the outsanding Great Northern stockholders on the same terms as the few who had been active in forming the company had put in theirs.

Q. Can you state, Mr. Hill, about how many shareholders there were in the Great Northern?

A. My recollection is there were about 1800.

Q. Now, was there any solicitation with the shareholders of the Great Northern, either on the part of the officers of the Great Northern or of the officers of the Northern Securities Company—any solicitation to them to turn in, to transfer, their shares to the Northern Securities Company?

3787 A. No, sir, there was absolutely none. On the contrary, great pains were taken to see that every shareholder understood that it was a matter for himself to decide and one that nobody else could decide for him. The price was such, being below the market, that it was thought it would deter a number from selling their stock. In fact, I did not expect that so large a number of the shareholders would exchange their stock. We gave them the opportunity if they desired to.

Q. About how many individual shareholders of the Great Northern have transferred their shares to the Northern Securities Company?

3788 A. Well, I can hardly say, but I should think possibly a thousand or twelve hundred. But that information can be accurately furnished from the books of the company. I am only speaking from the best general estimate I could make.

Q. I show the witness a paper purporting to be a circular from the Northern Securities Company to the holders of Great Northern stock. Is that the circular which was sent out by the Securities Company, soon after its formation, to the Great Northern shareholders?

A. (After examining the paper.) Yes, sir, that is a copy
3789 of the circular issued by the Northern Securities Company on the date of it.

Mr. Young. We offer this in evidence as Defendants' Exhibit 1.

Defendants' Exhibit 1 is as follows:

"NORTHERN SECURITIES COMPANY. 3790

James J. Hill, President.
John S. Kennedy, First Vice-President.
Geo. F. Baker, Second Vice-President.
D. Willis James, Third Vice-President.
W. P. Clough, Fourth Vice-President.
E. T. Nichols, Secretary and Treasurer.

27-29 Pine Street, New York City,
November 22, 1901.

TO HOLDERS OF STOCK OF THE GREAT NORTHERN RAILWAY COMPANY: 3791

The Northern Securities Company, incorporated under the laws of the State of New Jersey, with an authorized capital stock of $400,000,000, and with power to invest in and hold the securities of other companies, has commenced business, and has acquired from several large holders of stock of the Great Northern Railway Company a considerable amount of that stock.

A uniform price has been paid of $180 per share, in the fully-paid stock of this company at par. This company is ready to purchase additional shares of the same stock at the same price, payable in the same manner, and will accept offers made on that basis if made within the next sixty days. 3792

Offers for sale of stock of the Great Northern Railway Company should be made upon the enclosed form, and should be accompanied by the certificates of the stock offered with transfers duly executed, having United States stamps for transfer tax of two cents per share affixed.

Upon receipt of any such offer, so accompanied, the Northern Securities Company will deliver to the seller of the stock of the Great Northern Railway Company, certificates of its own stock to the amount of the purchase price above named, or, if such certificates are not then ready for delivery, its negotiable receipt obliging it to issue and deliver such certificates as soon as ready. For fractional parts of shares scrip certificates, convertible into stock in multiples of $100, will be given. 3793

NORTHERN SECURITIES COMPANY,
By James J. Hill,
President."

3794 Q. After sending that circular, Mr. Hill, state whether or not you received inquiries from shareholders in reference to what conduct they should take, what they should do with their shares.

A. There were a great many letters; I was in New York at the time, and a great many letters came addressed to the office, and some of them addressed to me, wanting to know what I would advise them to do. Some would write to the office and want to know what Mr. Hill wanted them to do or what the company wanted them to do.

Mr. Richards. Mr. Hill, had you signed the circular of the
3795 Northern Securities Company as president of that company?

Witness. Yes, sir.

Mr. Grover. Yes; it was after that that this was sent out.

Witness. My name is printed as president of the company.

Mr. Richards. Yes, I didn't recall exactly.

Witness. The circular has the names of the officers of the Securities Company in the upper left-hand corner.

Q. What action did you take in answer to those inquiries? How did you answer them?

A. Some individuals came in to see me. I told them it was
3796 their own affair. Others wrote, and there were so many letters that I prepared a letter that was in the nature of a circular letter, that would answer all their questions, and that was issued.

Q. I show the witness a paper, Defendants' Exhibit 2. Is that the circular letter which you prepared?

A. That is a correct copy of the letter which I prepared in answer to communications from shareholders.

Q. You sent it simply in answer to communications?

A. Yes, sir.

Q. And not to people that you had not received inquiries
3797 from?

A. Oh, no, no. This was in answer to communications, and, as I was coming to St. Paul, this general letter could be sent from the office in New York.

Q. Instead of writing a separate letter to each inquirer, you sent him this one?

A. Yes, sir.

The letter was offered in evidence, and marked Defendants' 3798
Exhibit 2.

Defendants' Exhibit 2 is as follows:

"Copy. November 30th, 1901.

Dear Sir:

Replying to your letter of the 23rd instant, asking for further information about the Northern Securities Company, I beg to say that the business of that company is to deal in 3799
high-class securities, to hold the same for the benefit of its shareholders and to do such other acts as will advance the interests of the companies whose securities it holds.

The powers of the company do not include the operation of railways, banking, nor buying or selling for others on commission.

The organization of such a company has been considered for many years by the original promoters of the St. Paul, Minneapolis & Manitoba Railway Company, and its successor, the Great Northern Railway Company, who have always remained the largest shareholders therein. These men have 3800
deemed it wise to make permanent arrangements for the protection of their interests and for securing a continuous policy in the management of their properties. Believing the Northern Securities Company will secure the objects named, they have generally sold to it their holdings of Great Northern shares, on the terms stated in the circular.

The traffic of coal and other local companies is of great value to the railway, while the conduct of the business of such companies is outside of the railway's corporate powers. The Securities Company will control this large traffic for the railway and will receive the profits of these separate prop- 3801
erties.

The offer contained in the circular came from the request of the large holders of Great Northern, above mentioned, who desired that all other holders might have the same opportunities as themselves in association with them, and upon the same terms. The writer is of opinion that the offer of

3802 the Securities Company is one that Great Northern shareholders can accept with profit and advantage to themselves.

Yours truly,

(Signed) JAS. J. HILL."

It is understood that the foregoing examination of Mr. Hill was on behalf of all the defendants.

CROSS-EXAMINATION.

3803 By Mr. Richards:

Q. Mr. Hill, you signed the circular of November 22 as president of the Northern Securities Company; you signed the circular letter of November 30, which you sent in answer to inquiries, in your individual name. I ask you whether those inquiries came to you from stockholders of the Great Northern, as president of the Great Northern, or to you as an individual, or to you as president of the Northern Securities?

A. It would be difficult for me to answer. I had been president of the Great Northern Railway for a long time, and, coming from the shareholders of the Great Northern, I think
3804 invariably I was writing to them giving them my individual view; that is the way it presented itself to me at the time—my individual views as to the questions they asked. I wanted to give them the information as fully as I could, whether I did it as president of one company or the other; I think it was more in my individual capacity, as one who had represented their interests for a great many years. It is the first time that that question has presented itself to my mind in that light, and I think that——

Q. Well, the circular letter of November 30 really had all the weight of your opinion as president of the Great Northern,
3805 and as the one who was most intimately connected with its affairs?

A. I don't think there was any advice given in that letter.

Q. Well, whatever the views expressed were, or the facts given, they came from you?

A. My recollection of the one of the 22nd was a simple offer to buy——

Q. Oh, I am speaking of the 30th.

A. Oh, of the 30th. 3806

Q. Of the 30th.

A. That gave them the facts, recited the facts, that the company was not a railroad company, and I think there is in it an important matter that they (I felt) ought to know. The company had been negotiating, and at that time was about to close the deal for some other important properties that would go to the Securities Company. I hesitated, I remember, about saying anything about it, because it might be construed as advising them, but if I concealed it from them I would be concealing an important fact. So I preferred to put down the fact and let it go as it was. 3807

Q. You state in this letter: "The organization of such a company has been considered for many years by the original promoters of the St. Paul, Minneapolis & Manitoba Railway Company, and its successor, the Great Northern Railway Company, who have always remained the largest shareholders therein. These men have deemed it wise to make permanent arrangements for the protection of their interests and for securing a continuous policy in the management of their properties." What did you mean by that?

A. "The protection of their interests;" protection from raids 3808 like the one which had been made in May previous, on the Northern Pacific. Some such raid might be made on the Great Northern. And for the making permanent the general policy. The road was built with great care, with very low grades, built through a country that had very few people for a long distance west of Dakota. When we built it we had to get permission from the government, because it was unceded land; and we had a policy; building a low grade road, a road that could move a large tonnage (if it could get a large tonnage) at a low rate, and develop the business, the country. It is true, as every one will find on inquiry, that that country 3809 has practically no manufactures, and the traffic has been confined to the natural productions.

Q. Yes, I understand what the policy was.

A. Well, it was to protect that policy.

Q. It was to protect and continue that policy?

A. Yes, sir.

3810 Q. And that meant to protect and to continue the control which had carried out that policy? That is what you meant by it?

A. Well, it was to protect the policy and to——

Q. Now, could you continue the policy without continuing the control?

Mr. Grover. Let him answer the question he started to answer.

Witness. I will answer it if you will permit me.

Mr. Richards. Yes.

3811 Witness. I may say that I think I controlled the policy of the Great Northern Railway Company and its predecessor as fully as the policy of any railway ever was controlled in this country, and I never owned over ten or twelve per cent—I never owned a majority of the stock, but I always had a following of good, loyal stockholders, and the men who were most active, covering about 33 or 35 millions out of 125 millions, practically formed the company, and they desired that their other shareholders, whoever they were, new or old, might participate in anything that they were doing, if they thought it would be any advantage to them as shareholders.

3812 Q. And so, in order to continue the policy which had obtained for so many years for the benefit of the company and of the public, they arranged to put their holdings into this holding corporation,—these shareholders?

A. The eleven shareholders.

Q. Yes.

A. And asked that the same offer be made to all the shareholders so that they might not be charged with any discrimination, or doing anything for themselves that they were not willing to do for all the shareholders.

Q. Exactly. Now, would the policy be perpetuated or the
3813 interest protected if less than a majority of the stock of the Great Northern had gone into the holding corporation?

A. Oh, yes, sir.

Q. If less than a majority of the stock of the Great Northern had gone into the holding corporation, wouldn't the stock of the Great Northern have been liable to a raid by hostile or rival interests?

A. The stockholders of the Great Northern were many in 3814
number, but we have always considered they were a very loyal list of stockholders, and we never felt that we were liable to lose control.

Q. You thought that about the Northern Pacific, too?

A. The Northern Pacific was in an entirely different position. The Northern Pacific stock, when the Burlington was bought, was selling at somewhere from 50 to 60, while the Great Northern was selling at three times that price. The Great Northern was selling at 180 or 190. A different question about getting control of the Great Northern. In answering the question it never occurred to me that we would lose 3815
control of the Great Northern except at a price that we would be well paid if we sold. We could afford to take any price that anybody could pay to get control of the Great Northern. I think there has never been in the past ten years an hour that that was not true. As long as we could control the traffic and develop it, the Great Northern shareholders would be well satisfied and well paid.

Q. Then you never intended to put into the Northern Securities Company a majority of the stock of the Great Northern Railway?

3816

A. I never did put it in. I put in a very small amount.

Q. And you thought you could protect the interests and continue the policy without placing in the Northern Securities Company a control or a majority of the stock of the Great Northern?

A. When we made the offer we decided to make the offer to allow all shareholders to sell their stock on the same terms as those who had been most active—a small number of ten or eleven. It was necessary, if they were going to sell their stock, to be able to give them the Great Northern stock in payment.

3817

Mr. Grover. Northern Securities.

Witness. I mean the Northern Securities stock in payment for the Great Northern. If the question has reference to the desire or preference, I should answer that if the individual men who formed the Securities Company had their choice and all the shareholders were there and could say, "We release you from any responsibility," we would have preferred to

3818 have had the Northern Securities Company stock restricted to the 35 millions. There isn't any question about that. I have discussed that with the shareholders many, many times. One gentleman spent an afternoon discussing it with Mr. Grover; another one spent an evening at my house; came from London to discuss it. So, it is not a new question with us. The question was, Shall we make a corporation and close the door on our old associates? If we do, it is the first time that anything has ever been done in which any shareholder had the advantage over all the shareholders. And that was the rea-
3819 son for making the offer, and the only reason for making the offer.

Q. Now, what was the response to the offer? How much stock of the Great Northern was exchanged for stock of the Northern Securities?

A. Oh, I don't recall the amount. I know a great deal came in before—I should say nearly half of it came in very soon after,—maybe 40 per cent. Then a lawsuit was started, I think by the State of Minnesota first, or Peter Power, I am not sure which,—but a lawsuit was started, and we took pains then—a great many had sent their stock to the office—
3820 we took pains to notify them that a lawsuit had been commenced, and the stock was not purchased, the transaction was not closed, until they were notified and asked: "Do you still want to sell your stock?" We felt it was a duty to let them know that such a lawsuit had been commenced, as that might make some difference in their view as to whether they wanted to sell their stock to the Securities Company or to hold it as Great Northern.

Q. Do you recall about how much stock had been transferred at that time? Was that the 5/12 of the stock of the Great Northern, which is referred to in the answer, that had
3821 been purchased and transferred at the time this suit was begun?

A. I don't carry those figures in my mind, because it would only be recollection, and it is so easy to get the record of any or every day in the year.

Mr. Clough. Mr. Richards, I gave it to you; I sent it to you from New York.

Mr. Richards. I just wanted to connect that with this suit 3822
—the information you gave me.

Mr. Clough. I gave you the holding on December 11th. You have it.

Q. Well, then, after this suit was brought, the stock of the Great Northern, which was purchased by the Northern Securities, was not transferred to the Northern Securities, but was held in outside hands?

A. I don't know that it was. I think that the purchase was not completed. Now, I was not in the office in New York until some time in the winter or spring, and the pur- 3823
chase was not completed; some of it was, but some of it was not.

At this time the hearing was adjourned until the morning of Tuesday, October 21, 1902, at 10 o'clock.

St. Paul, Minn., October 21, 1902.

The hearing was resumed at the same place at 10:35 a. m. James J. Hill, recalled, and his cross-examination resumed, 3824
as follows:

By Mr. Richards:

Q. Mr. Hill, I understood you to say yesterday that one reason why the stock of the Great Northern and Northern Pacific was put into a holding corporation was to protect it from raids similar to that of the Union Pacific interests on the Northern Pacific; that a railroad company, while it might acquire the stock of other railroad companies, could not, under the law, acquire the stock of an investment company, and therefore it was thought advisable to virtually change the stock of the railroad companies into the stock of an invest- 3825
ment company, or put the stock of the railroad companies in the control of an investment company. Am I correct about that being one of the reasons you gave?

A. Not in that direction. The Northern Pacific Company we considered much more subject to raids than the Great Northern. The Great Northern was held by investors mainly who had held it for a very long time; but one of the advan-

3826 vages would be that stock held by an investment company was more out of the way of purchase by railroad corporations, and less liable to be purchased in that way; in fact, the question as to the legality of a railroad company holding the shares of an investment company, that was one feature, not a controlling one.

Q. I understood you to say that you had been advised (and I inferred by counsel) that railroad companies could not acquire and hold the stock of an investment company, and that was one reason why the Northern Pacific stock was put in the control of a holding corporation.

3827 A. The charters of railway companies, I think, generally preclude the idea of holding investment company's shares.

Q. And for that reason do you think the Northern Pacific stock is any safer now than it was before?

A. We hope it is.

Q. Well, then, will you explain how it comes about that the Union Pacific interests now hold about eighty millions of the stock of the Northern Securities Company?

A. How it comes about?

Q. Yes.

3828 A. They sold their shares of Northern Pacific.

Q. But how it comes about, in connection with this legal objection which you spoke of.

A. That is a matter that concerns them and you; it does not concern us. We haven't the enforcement of the law in our hands.

Q. Yes? The Union Pacific interests, that is to say Harriman and Pierce, do hold about 82 millions of the stock of the Northern Securities, do they not?

A. Harriman and Pierce are the holders, as far as I know. Now whether it is held by the Union Pacific or whether it is a

3829 collateral trust or collateral for a trust bond for a railroad company is a matter, I suppose, of public record; it does not concern us.

Q. Well, it would concern you if Mr. Harriman and Mr. Pierce should go on and, in addition to their holding of 82 millions, acquire enough more stock of the Northern Securities to control that, wouldn't it?

A. Yes, sir, it would.

Q. And if they could find shareholders of the Northern 3830
Securities willing to sell, and if they deemed it profitable to go on, they could acquire a majority of the Northern Securities Company, couldn't they?

A. If they could find people who held it and owned it and were ready to sell it to them, they could buy it, if they were able to agree on the price.

Q. Well, then, the only thing that stands in the way of a raid by Harriman and Pierce, or men of that sort, is really the fact that shareholders of the Northern Securities cannot be found willing to sell a majority of the shares; isn't that true? 3831

A. I don't know that they could not be found; I would be unwilling to testify.

Q. Well, don't you know that they could not be found, Mr. Hill?

A. No, I do not. I suppose the shares of any business corporation have a value at which the owners would sell.

Q. Well, now, that wasn't true with you, Mr. Hill, at the time the value of the Northern Pacific stock went up to fabulous figures, was it?

A. No, sir

Q. You stayed "put," didn't you? You "stood without 3832
hitching?"

A. We had other interests, and there was a matter beyond the ordinary business interests. Our position was largely that, or my position was that of the executive head of a corporation, the existence of which was in jeopardy if that raid succeeded.

Q. That is what I understand, Mr. Hill, and I am putting it to you now whether you do not feel the same way as the president of the Northern Securities Company: that it is your duty as the head of that company, interested in the development of the Northwest, to see that the Northern Securities stock 3833
is not raided by some interest which desires to develop some other section of the country?

A. If other parties desire to buy the stock of the Securities Company, they could only do so by offering a price that would secure to them the shares—a price that the owners would be willing to accept. And it would be very difficult for them to do it. Possibly this will answer the question. We have tried

3834 to make it as difficult as we could, in a fair business way, for such raids to prove successful.

Q. Well, now, as a matter of foresight and of prudence, would not you look to it that the stock of the Northern Securities is not in hands that would sell it out to a hostile interest?

A. I haven't the control of——

Q. You haven't the control, but you have the interest?

A. I haven't the control of who should own it or might own it. The stock is for sale. And the owners must always settle that. I think some of the owners who have always worked
3835 together would be very slow to dispose of their shares without consulting their associates.

Q. You know how and in what hands the stock of the Northern Securities Company is held, who are the large shareholders?

A. Probably out of eleven or twelve hundred shareholders I know the names of twenty-five or thirty.

Q. Is there any block of stock held by any one individual larger than that held by Harriman and Pierce?

A. No, sir.

Q. That is the largest holding?

3836 A. If it is held by Harriman and Pierce.

Q. I understood Col. Clough to say that it stands on the books of the Northern Securities Company in the name of Harriman and Pierce.

A. I have seen it announced that it was placed as security for a bond or debenture,—some security of the Oregon Short Line.

Q. Well, I was referring to the way in which it stands on the books of the Northern Securities Company.

A. Oh! I have not examined the books for several months. It was issued to Harriman and Pierce, I think, as individuals,
3837 as far as the record of it.

Q. About what is the outstanding stock of the Northern Securities Company, how many millions?

A. Oh, three hundred and fifty or sixty; possibly more, and it may be four or five millions less. I haven't looked at the totals for some time.

Q. Well, if Harriman and Pierce were to double their hold-

ings, they would come close to the mark of having one-half of 3838
the stock outstanding, would they not?

A. They would have some difficulty probably in doubling their holding; if they did they would have to pay a fair price for it. They would have to pay a price that the owners would be willing to sell at. The shares are held largely by people who have been interested in the Northwest for a long time, and I think have reason to be pleased with their investment, and would be slow to sell.

Q. Well, then, that is the true safeguard and security of the Northwest interests, the fact that the stock, or a majority 3839
of the stock, of the Northern Securities Company is in hands which have the development of this section at heart and would not be willing to sell?

A. Oh, that,—the development of the section of country——

Q. I mean the development of the lines of railway.

A. And the line of railway is a matter of self-interest with them; that is their business interest; the growth of the country reflects upon the growth and value of their property; and I think investments are always, that is, business investments, are always controlled by business reasons, and the purchase and sale would be one of price. 3840

Q. Mr. Hill, yesterday you stated that but a very small per cent of the interstate business of the Northern Pacific and the Great Northern could be affected by these two companies in any way without the co-operation of other companies.

A. Yes, sir.

Q. I think you mentioned ten per cent; that was in answer to an inquiry touching the competitive business of the two railways. I would like to have you explain what sort of business you refer to by this particular business that would alone be affected by the two companies. You stated it in a general way; I would like to have you go into some detail. 3841

A. I meant to make it reasonably plain, and will try to do so. The business I alluded to was the interstate business on the lines of the Northern Pacific or on the line of the Great Northern. The interstate business was not controlled; that is, the rate upon it was not controlled or affected by the rates made by other lines. For instance, a station where the Northern Pacific and the Great Northern Railways both

3842 reached and some other railway line also reached: it would be necessary at that station for all three roads to make the rate; no one or two could make the rate independent of the other; and at stations of that kind I feel very certain that business of that description on the line of the Northern Pacific and Great Northern together will not amount to ten per cent of the interstate business.

Q. Do you limit it to business that originates and terminates upon the line of either the Northern Pacific or the Great Northern?

3843 A. Oh, I mean that it is business that originates or terminates on the line of the Northern Pacific or Great Northern, and may be destined for or may originate in any part of the country or out of the country.

Q. But business which cannot be handled by any third line; is that your statement?

A. Business that cannot be handled by any third line, that is competitive between the two, would not amount to ten per cent of the entire interstate business. I feel very sure that ten per cent is in excess of the amount the actual figures would show.

3844 Q. Why do you make that limitation and exclude all competitive business between the Great Northern and the Northern Pacific where there is also another railroad company which may compete? Is it less important to keep up the competition between the two lines simply because another one may compete?

A. I answered the question. Mine was in answer to a question, and I tried to answer it intelligently.

Q. Well, it was rather a puzzling answer to me; your statement that the action of these two railway companies could not affect more than ten per cent of the traffic, in view of your

3845 other statement that the action of the two railroads in acquiring the Burlington and in carrying out certain improvements in service and in rates had resulted in a very large increase of the traffic. I think you said with regard to certain traffic some thirty-three per cent, and with regard to others it had doubled.

A. More than doubled.

Q. Yes.

A. And that had reference to the extension of traffic and 3846
the reduction of rates, and, as I understood the question, in reference to the amount that would be affected, that was the amount of business upon which the Northern Pacific and Great Northern might advance the rates. Quite a different question.

Q. Well, now in that connection do you take the view that the Northern Pacific could not advance or lower the rate where some other company had also to take part in carrying the freight? Do you take that view?

A. A railway can always lower the rate.

Q. No matter whether it carries the freight the entire dis- 3847
tance or not?

A. It can always lower the rate, as a matter of right; if it advances the rate and other roads are willing to carry it for less, it loses the business.

Q. Exactly. And if it is carrying freight in connection with another line (a connecting line) it can lower the rate so far as its own portion of the carriage is concerned, whether the other railroad is willing to or not.

A. I think that practice is very uncommon.

Q. I think so, too. 3848

A. I think it might be able to do that, but if the rate is a published rate, which the law compels, I do not know how a railroad company would make a published rate, and then in connection with another road, or what is known as a joint rate, reduce its own rate below the rate at which it was carrying the same class of business over the same country. I think it would be rather difficult to reconcile it with the law.

Mr. Richards. Well, that was not the case I was referring to. Of course, I meant a lawful reduction of rate, not any cutting.

Examined by Mr. Day: 3849

Q. Mr. Hill, you spoke yesterday of the development of the Great Northern Company. Was it organized under a special charter or under the general law?

A. Under special charter.

Q. What is the corporate name of the Great Northern Company?

A. Great Northern Railway Company.

3850 Q. What charter was it evolved out of?

A. I think the name of the original corporation was the Minneapolis & St. Cloud, or it might be Minneapolis, St. Cloud & Superior.

Mr. Grover. Minneapolis & St. Cloud Railway. Simply the name was changed.

Mr. Day. Simply the name was changed?

Mr. Grover. That is all; simply changed the name under the provisions of the charter.

Mr. Day. The Great Northern took all the rights and——

3851 Mr. Grover. Changed the name to the Great Northern.

Mr. Day. It retained all the rights, franchises and land grants that were appurtenant to the charter of the Minneapolis & St. Cloud?

Mr. Grover. It didn't retain it—it was that company.

Mr. Day. I am asking Mr. Hill simply to get it in the record, that is all.

Witness. It is that company, with the change of name, is it not?

Q. How much of a line of railway was built by the Minneapolis & St. Cloud before its name was changed to the Great

3852 Northern?

A. About 200 miles, if I remember right; maybe 230.

Q. What mileage does the Great Northern Railway Company own?

A. It has a very short mileage; almost all the lines that it controls it owns through the ownership of stock or leases.

Q. Could you give approximately what mileage the Great Northern Railway Company owns?

A. A copy of the annual report just published (which I would be glad to give you) shows in detail.

Q. I thought perhaps you might give approximately the

3853 mileage owned by the Great Northern Railway Company.

The Examiner. Do you offer that as an exhibit?

Mr. Richards. We would like to have that in, and Mr. Hill says he will furnish it.

The Examiner. Defendants' Exhibit 3 will be supplied by the witness.

Q. Could you give it approximately, Mr. Hill?

A. Oh, I could approximately. It is changing almost from 3854
month to month, added to. Somewhere between 5,500 and 6,000 miles.

Q. That it owns?

A. That it owns or leases, or owns the shares of.

Q. No, my question was as to the mileage that is actually owned by the Great Northern Railway Company.

A. No, I could not. I would have to go back and look at the titles; I don't know that it owns, except in the way that I have spoken of—I don't know that it owns any.

Mr. Grover. Is that what you want? 3855

Mr. Day. That is what I want.

Mr. Grover. It does not own the fee of any——

Mr. Day. Mr. Hill ought to know; he is the president and was present through its development.

Q. Now, what is the mileage of the St. Paul, Minneapolis & Manitoba road, approximately?

A. About 3,800 miles.

Q. Was that company organized under a special charter to it?

A. Yes, sir, a special charter; not to that name, but a special charter by the territory of Minnesota, before it was a 3856
state.

Q. And to what company was that charter granted?

A. I think the title originally was the Minnesota & Pacific.

Q. Was that another instance of a mere change of name by which the Manitoba road went on, under the charter of the Minnesota & Pacific?

A. I think the Minnesota & Pacific was changed to the St. Paul & Pacific, and the St. Paul & Pacific to the St. Paul, Minneapolis & Manitoba.

Q. And the St. Paul, Minneapolis & Manitoba road took all of the franchises of the Minneapolis & Pacific and the St. Paul 3857
& Pacific?

A. Of the Minnesota & Pacific.

Q. Of the Minnesota & Pacific, and the St. Paul & Pacific?

A. Yes, sir.

Q. Including its land grants and whatever pertained to it?

A. It was a foreclosure of bonds, and it took whatever the decree of foreclosure gave.

3858 Q. How did the Great Northern Railway acquire the title to operate the St. Paul, Minneapolis & Manitoba road?

A. In the first instance by a lease.

Q. In what year was that?

A. I think in 1889.

Q. For what length of time?

A. It was completed probably early in 1890; 999 years, I believe, was the term of the lease.

Q. The Great Northern has a lease of the Manitoba road for 999 years?

A. Yes, sir.

3859 Q. Now, in addition to that, is it an owner of the stock of that road?

A. It subsequently bought the shares of stock of that company to a very large extent, say 97 or 98 per cent.

Q. What is the relation of the Great Northern to the Eastern Minnesota?

A. It leases it.

Q. Is that a long-term lease also?

A. I think that is 99 years.

Q. Is it an owner in the shares of the Eastern Minnesota?

3860 A. Yes, sir.

Q. What proportion of the stock does it own?

A. Very large; almost entirely.

Q. What other roads are operated or owned, by the ownership of stock, by the Great Northern?

A. The Willmar & Sioux Falls, Montana Central, some lines in Dakota, some lines in Washington, some lines in Montana, and some in Idaho.

Q. And the total mileage, as operated by the three proprietary lines or leased lines, is now what?

A. The total mileage of the system is between 5,500 and

3861 6,000. The report will show accurately.

Q. You were speaking yesterday of lumber rates from the Pacific Coast east, and you mentioned a meeting of some lumbermen who came here to consult you, or you met them elsewhere, in which it was agreed upon that the lumber rates should be reduced; when was that?

A. That is not according to my testimony.

Q. Well, whatever you spoke of; you spoke of a meeting.

A. I said that on my first trip to the Pacific Coast I called 3862
together the lumbermen to try and find out what rate would enable them to move their lumber to the Eastern markets, to markets east of the Rocky Mountains.

Q. Now, I ask you when was that meeting?

A. That meeting, I think, was in the fall of 1889.

Q. When was the rate of forty cents a hundred put in on that lumber?

A. As soon as our road was completed and ready for business, which was in 1893.

Q. You mean by forty cents a hundred, the rate from the 3863
Pacific Coast to the Mississippi river?

A. To the Twin Cities or to the head of Lake Superior, or fifty cents to Chicago. I think the fifty-cent rate was made at that time, or very soon after.

Q. Did any of the other lines follow your rate of forty cents?

A. Where from?

Q. Well, say from Washington to the Mississippi river,—from the origin of the traffic.

A. The rates to Minnesota Transfer or St. Paul and the rate to Omaha are usually the same; but the rate on lumber to 3864
Omaha has never been made as low as it is here.

Q. Did any of the lines meet your rate of forty cents to the Twin Cities?

A. The Northern Pacific did, and I think at that time it was the only line. I know Mr. Villard, a few months before we opened the road, said that a sixty-five cent rate was an impossibility. But they changed their mind on that subject.

Q. When you made the reduction in rates from the Pacific Coast to the Twin Cities or to the Mississippi river, the head of the lakes, did you make a reduced rate correspondingly to interior points between the Mississippi and the Pacific? 3865

A. Certainly; the long and short haul would compel that, wouldn't it?

Q. Well, I am asking as a matter of fact. The rate was uniform, was it,—a blanket rate,—covering the entire territory?

A. The rate from points west of the Rocky mountains, Kalispel valley, was somewhat lower than the Pacific Coast rate.

3866 Q. Has the rate continued the same from that time until now, or has it been changed since?

A. It has not been changed; I think the rate has remained. It is a very low rate,—I think the lowest rate on lumber that is made anywhere.

Q. You have mentioned a reduction in rates of ten to fifteen per cent since the purchase of the Burlington road.

A. Yes, sir.

Q. When was that reduction made?

A. During the last year.

3867 Q. About when?

A. Oh, my recollection is that the merchandise reduction was made some time early in the year, soon after the 1st of January. The grain rate was made during the summer, but before the crop moved.

Q. Who directed the reduction of the rates?

A. On the Great Northern?

Q. Yes.

A. It was a matter of conference between the officers and myself. It was not a new thing, the reduction of rates on the Great Northern; it is not an uncommon thing. It is quite

3868 frequent. It has been for a number of years.

Q. Is that reduction, the one that was made early in the year, the one that Mr. D. H. Miller participated in while he was yet vice-president of the Great Northern, and its traffic manager?

A. Mr. Miller, when he was vice-president of the Great Northern, had to do with considering the reduction. The reduction, the character of it, was one that made necessary a great deal of careful work. It was adjusting the distance tariff as well. The distance tariff, owing to changes in the mileage, had become a sort of patch work, and the rate was

3869 reduced substantially to making the distance tariff 105 per cent of the terminal tariffs,—the reduction varying in different localities; some places it might be 8 per cent and in others 25 or 30, but I think the average was about 15.

Q. My question, Mr. Hill, was whether the rate, the reduction that was made early in the year on merchandise, as you called it,—whether that was the schedule that was made by Mr. Miller, in which he participated?

A. He had to do with the matter while he was here. I am not clear as to whether, when the rate was made public, Mr. Miller was here or not. 3870

Q. Were those reductions made on the class rates or on the commodity rates?

A. Largely on class rates and distance tariffs.

Q. Iron or steel is not in your class rates, is it?

A. I have not the classification here; if I had I could tell you.

Q. Do you happen to know?

A. I do not. In carloads it would be in the special.

Q. Yes, I am speaking of carload lots. 3871

A. Well, it would be in the special. But the classification would be a great deal more accurate than my memory.

Q. Then I will put it in another form. The reduction that you claim to have made, after the purchase of the Burlington, did not cover iron or steel, did it, Mr. Hill?

A. I could not say.

Q. Or coffee or sugar?

A. It is quite easy to get the tariff before and after, and that will show exactly.

Q. Yes. I am endeavoring to ascertain what you cover when you say a reduction of ten to fifteen per cent had been made after the purchase of the Burlington. 3872

A. The reduction amounted to ten or fifteen per cent; the reduction amounted on grain to practically ten per cent, almost exactly ten per cent, as nearly as it could be made, in the West, and to substantially the same in the East; while the reduction of merchandise varied in different localities, and on the whole was about fifteen per cent on merchandise.

Q. This reduction of ten per cent that was made on grain, from what points to what points did that reduction apply?

A. From points on the line of the railways to the terminal points, where the grain moved to market. 3873

Q. Do you mean to say that from all the points where grain was raised on the Great Northern, to the Twin Cities, the rate was reduced ten per cent?

A. Nearly that, and some places more than that.

Q. And on the Northern Pacific likewise?

3874 A. I am more familiar with the reduction of rates on the Great Northern.

Q. Well, you said the rates were reduced, in response to Judge Young, who made that remark, and I am asking you now if these rates applied on the Northern Pacific?

A. I am more familiar with the rates on the Great Northern, but I think an examination of the tariffs will show that it was substantially the same on the Northern Pacific.

Q. Well, now, did these reductions apply from all points on the Great Northern to the Twin Cities, on grain?

3875 A. Substantially so, on all points where grain is raised.

Q. Yes, of course, I am asking you a practical question now, and where it operated.

A. Yes, sir.

Q. At all points where grain was produced, had its origin, that reduction applied to the Twin Cities and also to the Pacific coast?

A. And to the head of Lake Superior.

Q. Yes, applied to all three: to the Twin Cities and the head of Lake Superior and to the Pacific coast?

A. I understand that the reduction on the eastern end was
3876 not exactly ten per cent; in some cases it was more and in others not so much.

Q. Have you exercised a general supervision of tariffs over the Great Northern system during the past two or three years?

A. Not in a way of supervision. The changes that have been made, if they are of large consequence, have been a matter of conference or advisement.

Q. Is it true that about the 1st of January, 1900, a new classification went into effect on the lines of the Great Northern and Northern Pacific, and in fact on all the transconti-
3877 nental lines west of the Mississippi river?

A. I could not testify as to when the classification went in. It is quite an easy matter to fix the date by getting the classification sheet.

Q. The change of classification, you may recall, Mr. Hill, on the 1st of January, 1900, occasioned a very great deal of discussion throughout the United States; protests were filed with the Interstate Commerce Commission, and published in

many of the newspapers of the land, regarding the official 3878
classification that applied east of the Mississippi river. At that time a new classification went into effect, applying upon the roads west of the Mississippi river, the Burlington and the Great Northern and the Northern Pacific. Do you recall that at all?

A. I do not. I know there was a great deal of discussion; I remember there has been from time to time very considerable discussion on the matter of classification and attempts to call for a uniform classification throughout the country. I never could understand any reason for it. I have seen the discussions and I have seen arguments in favor of it, but the 3879
conditions——

Q. I am not referring to the question of uniform classification.

A. I was answering this in regard to the "discussion," as I understood your question.

Q. No, not the uniform classification. It was the complaints of manufacturers and shippers that by reason of this classification that went into effect on the 1st of January, 1900, in the territory of the Great Northern road and the Burlington and the Northern Pacific, the rates were advanced from 3880
fifteen to fifty per cent on more than 250 articles of general merchandise. Do you recall that?

A. I do not, and don't think that it applied in any such way. Most of that business is carried under commodity rates.

Q. Well, I am speaking now of the class rates that were changed.

A. I think that the business is carried under commodity rates and not under the class rates; I don't think the class rates practically cut any figure in it.

Q. These articles bore the class rates, and the articles were changed from a lower class to a higher class by reason of the 3881
change of classification; the rate was changed on the article. You don't recall that?

A. I do not.

Q. You don't know whether that is or is not true?

A. I don't know whether that is true or not.

Q. Now, to get back to the question of the reduction of rates. You say you don't remember whether sugar and cof-

3882 fee and tea and oil and iron and nails and wire are carried in class rates or commodity rates?

A. Sugar is carried in class rates, I believe. I do not charge myself with the classification.

Q. Was the rate on sugar reduced?

A. I could not tell you, sir.

Q. Was the rate on oil reduced?

A. I wouldn't undertake to say.

Q. Or nails?

A. I wouldn't undertake to say.

Q. Or oil?

3883 A. You can get all that information from the tariffs better than from my recollection.

Q. I am trying to ascertain what you covered by your general statement when you said rates had been reduced ten per cent; I am endeavoring to ascertain whether rates were reduced on these necessaries of life.

A. Rates were reduced on the business of the railway, the business carried by the railway, and the reduction can be substantiated more readily by the tariffs themselves than by any other means.

3884 Q. I thought perhaps you had looked into the question; that when you said there had been a reduction of ten per cent, you would probably know on what articles the reduction applied.

A. The reduction of ten per cent on grain on the Pacific coast; the reduction was ten per cent.

Q. Yes; that was this summer you made that change?

A. Yes, sir; and that was the reduction I alluded to; the reduction on the eastern end of the road was an average of about ten per cent. It might be a little more. In some cases it was considerably more than ten per cent, and in some cases

3885 not so much. The rate, however, would average about ten per cent. Then, the merchandise rate, I think, would average fifteen per cent of the existing rates.

Q. But you can't give what articles of merchandise the reduction was made upon?

A. No, sir, I could not. The figures in my mind came from my general knowledge as to the effect upon the revenues of the company, and so on, and in discussing the matter with

the accounting department and the traffic officers that was 3886
the effect of the reductions.

Q. You spoke of a rate that you put in from some point on Lake Erie to Hong-Kong on nails and wire, of forty-five cents a hundred?

A. Yes, sir.

Q. What was your rate to the Pacific coast at that time on the same articles?

A. I don't know.

Q. Can you state, Mr. Hill, on how many articles the rate was reduced after the Burlington purchase?

A. The tariffs will give that information better than my 3887
recollection, and we will be very glad to furnish the tariffs.

Q. Yes; I am asking if you know.

A. I would not undertake to say, speaking from recollection.

Q. You only state generally that the rate was reduced on some articles, but you cannot state what they were, or the number?

A. I have stated, and tried to.

Q. You stated grain, I recall that. Now, on what others?

A. On merchandise. 3888

Q. What do you mean by merchandise?

A. On all that comes under the class of merchandise. Now, lumber is not usually called merchandise, for it is carried in a classification by itself; and so is pig-iron; so is coal; so is salt.

Q. Did you make a reduction on those?

A. They were already very low.

Q. Did you make any reduction on those articles after the Burlington purchase?

A. I think not. I think those rates are lower here than they are in most of the states in the East, where they carry 3889
ten or fifteen times the tonnage—the density of traffic. I think the coal rate here is lower than it is on the Reading road, for instance, or on the Lackawanna.

Q. How long has that rate been lower than on those roads?

A. Oh, several years.

Q. There has been a very bitter complaint in the East that the rate on coal on those roads is abnormally high.

3890 A. I have often wondered why the gentlemen who are charged with the regulation of these matters did not take it up and help the public.

Q. Your astute counsel have had determined that question, I believe,—that the reasonableness of rates or the amount of rate was not a question that the public authorities could deal with; that would have to be left to the individual suitor. I think you got some such decision as that from the Supreme Court. Now, Mr. Hill, do you know what your gross earnings were per ton per mile of traffic, last year?

3891 A. The year ending the 30th of June?

Q. Yes.

A. Yes, sir.

Q. What was it?

A. .859 of a cent.

Q. Do you know what the average earnings of the roads of the United States per ton per mile were in that same year?

A. I have not seen the figures up to the 30th of June.

Q. It was .729. Yours was what?

A. .859.

Q. The average for the roads of the United States was——

3892 A. .729.

Q. .729. What was yours for the year ending June 30, 1901?

A. I could not recall it. It would be something higher; .860 something, I should think.

Q. Do you know what it was on the Northern Pacific?

A. The Northern Pacific would be higher; probably in the neighborhood of .900.

Q. Do you know what it was on the Atchison?

Mr. Grover. .988.

A. I think the Atchison would be nearly a cent. I know I looked this morning; opening my mail I found the report of

3893 the Rock Island; I found that was 1.04 for the year just closed.

Q. I examined the report of the Interstate Commerce Commission, their statistical report for the years 1900 and 1901, which is made on the sworn returns of your own road and of the other roads of the United States.

A. Yes, sir, I have no doubt they are correct.

Q. And the average earnings for those two years were 3894
somewhat lower than yours, which brings me to ask you to explain wherein the Atchison rates are higher than your rates. You said yesterday that if you could have the same rates on your road that the Atchison gets on its, your earnings would be something over five millions in excess of what they now are on the same quantity of traffic carried.

A. If you will take the number of tons carried one mile by our road and multiply it by the average rate of the Atchison, I think you will find it will increase our income about five millions of dollars.

Q. But you didn't mean to have it understood that the rates 3895
of transportation on transcontinental traffic are higher on the Atchison than they are on the Great Northern or Northern Pacific?

A. In many cases they are.

Q. Are the classification rates not the same?

A. I don't know.

Q. Do you file with the Interstate Commerce Commission all of your rates?

A. I think so. All interstate rates I think are filed with the Interstate Commerce Commission.

Q. The rates that are filed by both roads with the Inter- 3896
state Commerce Commission are the same, the class rates.

A. Are they?

Q. They are.

A. To common points?

Q. Well, to Pacific coast points and transcontinental and Asiatic traffic.

A. I think the rates on Asiatic traffic vary.

Q. They vary by water, but I am speaking now of the rail haul.

A. Take, for instance, the rate on lumber from the Pacific 3897
coast to Omaha or Kansas City, I know that that rate is higher than the rate to St. Paul or Duluth.

Q. Yes, but you say they don't carry any of that lumber.

A. The Atchison?

Q. Yes.

A. They don't carry lumber from Puget Sound, but lumber does come from Oregon.

3898 Q. From where?

A. From Oregon, to all the intermediate country.

Q. Does the Atchison participate in that traffic?

A. No, sir, not that I know of.

Q. No, I thought not. These rates that were put into effect in the early part of this year, went into operation on both the Northern Pacific and the Great Northern about the same time?

A. And on other lines in the same country.

Q. What other lines?

3899 A. I think the Soo road had to modify its rate.

Q. Yes, they had to meet it to get participating traffic.

A. And the Milwaukee & St. Paul and other roads.

Q. Now, were those reduced rates that were put into effect in the early part of this year on the Great Northern and Northern Pacific the result of a conference between the Northern Pacific and the Great Northern traffic officers?

A. I think that all rates or all changes in rates are preceded by a conference between the parties interested. I think that is the custom.

Q. The result of an agreement? They agreed on these re-
3900 ductions and put them in at the same time?

Mr. Young. No, he didn't say so.

Mr. Day. I am asking him if that is so.

Witness. Not necessarily an agreement. Very dangerous to make an agreement in regard to rates. They find each other's views, and if one road wants to make the rate and to make a reduction in the rate and notifies the other, they are going to do it anyway, the discussion ends in their publishing a rate that is probably uniform.

Q. Do you remember being at Chicago in January of this year when the subject of the combination between the Great
3901 Northern and the Northern Pacific was under consideration by the Interstate Commerce Commission?

A. I remember being called to Chicago to testify on the subject of community of interests, or something of that nature.

Q. Yes, community of interests. And consolidations and combinations of carriers.

Mr. Grover. That was put into the title afterwards.

Witness. That was not in the notice that came to us there. 3902

Mr. Day. You are in error in stating that, Mr. Grover. I do not regard it as of any special consequence excepting that you have publicly stated an error. The notice that went to you was a copy of the resolution of the Interstate Commerce Commission, and, among other things, it says: "And whereas, it appears to the commission that certain consolidations and combinations of carriers subject to the act, including the method of association known as the 'community of interest plan' should be made the subject of investigation." "Combination" was in it and was not put in afterwards.

Mr. Griggs. Do you want this on the record? 3903

Mr. Day. It is immaterial to me. I suppose the stenographer took it all, with Mr. Grover's remark, and then Mr. Hill said it was "community of interest," and of course it was, and the other thing as well.

Q. What I was referring to there was the testimony of Mr. Miller; Mr. D. H. Miller, who had been vice-president and traffic manager of the Great Northern.

Mr. Clough. D. Miller—not D. H.

Mr. Day. You are right; Darius Miller.

Q. Mr. Miller there testified that in making up this sched- 3904
ule of rates that you speak of that went into effect early in this year, it was done under an agreement with the Northern Pacific and the Canadian Pacific, I think, and that the reductions which were made were made only in the class rates, and that coffee and iron and nails and oil and wire and sugar and tea were not covered by the class rates, that they were what he called commodity rates, and that there had been no reduction in the commodity rates. Do you remember that testimony?

A. I do not, sir; I don't know that I heard it.

Q. Mr. Hill, Judge Young put the question to you concern- 3905
ing reduction in rates following the acquisition by the Great Northern and Northern Pacific of the Burlington system, and the question was framed to give the impression that the reduction of rates was caused by the acquisition of the Burlington. Is that the way you wish to have it understood—that it resulted from that and as a consequence of that?

A. The increased traffic growing out of the acquisition of

3906 the Burlington, or the acquisition of the Burlington was in a measure responsible for a portion of that increased traffic. The increased traffic, creating a larger revenue from a larger business, made it not only possible but we thought it wise to reduce the rates. The rates have been reduced always on the basis of the growth of the company's business, and in all the years, several years past, our company has had its dividend, that is all its shareholders get, and as our business increases, the volume of our traffic increases and our revenue increases, we are able to reduce our rates, and hope to be able
3807 to continue to reduce them for the same reason.

Q. My question was whether you wished to be understood as stating that it was because of the acquisition of the Burlington system by the Great Northern and Northern Pacific that this reduction in rates that you mentioned took place?

A. I understood the question and tried to make it plain; I hope I have.

Q. I simply wanted to clear up my own mind by asking you definitely if that is the way you wish to be understood.

A. I hope I have made the answer plain.

Q. Did you cause a reduction of the rates applying on the
3908 Burlington system to be made at the same time?

A. I had no desire and made no attempt to——

Q. The reduction applied——

A. I made no attempt to deal with the rates on the Burlington in any way.

Q. The reduction applied only to the Great Northern and Northern Pacific?

A. Yes, sir.

Q. The roads in direct competition, going west?

A. In my testimony I alluded to the reduction on the Great Northern particularly, and also to the reduction on the North-
3909 ern Pacific which corresponded with the Great Northern where they were at common points.

Q. You spoke yesterday, Mr. Hill, of the vast benefit that is to accrue to the people of this northwest territory, lying west of the Mississippi, from this acquisition of the Burlington by the Great Northern and Northern Pacific; that by reason of that acquisition you were going to give them coal

here in the Twin Cities and in the manufacturing towns here 3910
in the West at lower rates than had been prevailing.

A. I would like the record read where I said that. I think that is not a fair statement of what I said.

Q. Well, then, I don't wish to be unfair; that was the impression it created on my mind, that you wiuld be enabled by this acquisition to lay down coal here cheaper than it could otherwise be laid down and you could avert coal famine. Now, I wish to know whether any reduction in the coal rate from the Illinois coal territory to St. Paul or Minneapolis has resulted in the year and a half of your control of the Burlington system. 3911

A. The Burlington has not been controlled for a year and a half, to begin with; and in the next place, I did not have, nor is my language susceptible of that meaning. I undertook to make it plain that the acquisition of the Burlington and the bringing of the interests of the Burlington into that of the Northern Pacific and Great Northern would make it possible to get coal for this country, and it was not possible to get a certain supply of coal in any other way except from Illinois.

Q. Are the facilities for bringing coal over the Burlington road from Illinois greater by reason of your control of the 3912
road than they were when the Burlington was under an independent control?

A. The facilities and reasons for bringing it here are greater if we controlled the Burlington than if we did not. If we did not control the Burlington and they desired to send their coal to other places, we would fall very short of compelling them to bring it here; but I think——

Q. Does the transportation line direct where a commodity shall be shipped to, or is it the shipper, the consignor?

A. We could control that by buying our own mines, and be certain that we could bring it here. 3913

Q. Oh, you could do it?

A. Yes, sir.

Q. Have you purchased any mines in Illinois?

A. We have to this winter. And I will answer that question if it is germane to this examination; we prefer not to give our business away and advertise it to the world unless it is necessary.

3914 Q. Well, then, I certainly have no wish to intrude upon your private affairs. But as you assigned that as part of your argument and as a part of the reason why the northwest was to be benefited by your possession of the Burlington stock or Burlington road, and you mentioned coal fields——

A. Well, our interest——

Q. I will ask you this question, Mr. Hill.

A. Well?

Q. Has the Northern Securities Company coal mines in Illinois now, or had it at the time of the inception of this suit?

3915 A. No, it had not at the time of the inception of this suit.

Q. When did the Burlington road pass into the possession of the Northern Pacific and Great Northern?

A. I think a year ago in July.

Q. The purchase was made when, concluded when?

A. Oh, probably concluded in September.

Mr. Clough. Yes.

Witness. A year ago last month.

Q. When was the contract made for its purchase?

A. It was made during March and April mainly, but the completion of it—the final completion—was I think in Sep-

3916 tember.

Mr. Clough. That is right.

Q. You spoke of the increase of business that had followed the purchase of the Burlington system.

A. May I, before the coal question is dismissed, endeavor to clear that matter?

Mr. Day. I have no objection, Mr. Hill, to your making any statement you wish.

Witness. I do not want to be misunderstood, and from the questions I think I have been. The Great Northern Railway Company and the Northern Pacific Railway Company have an

3917 interest in this country and in people living here, and inasmuch as our winters are cold it would be difficult for them to live here without fuel, and it is a very serious matter —it is a very serious matter for the railways. We don't know now that we will be able to run our trains to the 1st day of February, with the lack of supply of coal, without bringing coal from Illinois, and we don't know but we will have to give up a portion of our supply of steam coal to keep

people from freezing before spring,—and it is not due by 3918
any means to the anthracite strike, and I tried to make it plain yesterday that it was not; but it is due to the inability of the railroads between Lake Erie and the mines in West Virginia, Pennsylvania and Ohio to move the coal. They are unable to move the coal up to Lake Erie ports, and we are unable to get a supply. At this time we have not been able to get one-half of our purchases for the year, and navigation will close sometime next month. That is the importance of the control for us of access to the coal mines of Illinois, which are the nearest coal mines to this country, and the import- 3919
ance of that will be apparent more and more as time goes on.

Q. A question was put to you by Judge Young that left the impression upon my mind that traffic in carload lots, which came to your line in Burlington cars destined for the Pacific coast, was unloaded and reloaded into your cars before your acquisition of the Burlington road. Do you wish to be understood as making that statement?

A. I understood Judge Young to make that statement applying to all roads carrying traffic from the South, not limiting it to the Burlington.

Q. Did it apply to the Burlington road when traffic came in 3920
Burlington cars, carloads for the Pacific coast?

A. The same as it would to other railways.

Q. Was that the practice, that it should be loaded and reloaded into your cars, or did they go through in carload lots intact?

A. They were generally transferred if they could be, because the mileage on (as we call it) a foreign car, a car of another company, going two thousand miles, was a very considerable sum; mileage of three-quarters of a cent a mile amounted to $15. $15 would transfer quite a number of cars. I mean $15 a car. That would pay for transferring a number 3921
of cars.

Q. You said yesterday that the reason for trans-shipment, or assigned it as the one that was operating in your mind, that the cars were not large enough.

A. Many of the cars are not large enough. I think I alluded to shipments of cotton, cars from southern roads carrying

3922 a hundred or, in some cases, ninety bales of cotton, and our larger cars would carry 150 or 160 bales of cotton.

Q. What is the average capacity of your cars?

A. Well, it would be difficult to say without making a computation. We have a few cars of 30,000 pounds capacity —probably three or four hundred; then we have a number of cars of 40,000; we have a greater number of cars of 60,000, and we have a number of 80,000 and 100,000 pounds. All the cars we build are 80,000 or 100,000 pounds, and long cars. We have some box cars carrying 80,000 pounds, which are 44

3923 feet long inside.

Q. How many cars have you, approximately, of 80,000 pounds capacity?

A. Oh, eight or nine thousand, I think.

Q. And how many of sixty thousand?

A. Probably eight thousand.

Q. When you referred to the small carrying capacity of cars, you meant the southern roads and not the Burlington?

A. I meant the roads south of here.

Q. Did you mean the Burlington?

A. The Burlington has a larger proportion of small cars

3924 than we have on the Great Northern.

Q. A larger proportion of what?

A. Of small cars.

Q. But the Burlington has as many large cars as you have, has it not?

A. I don't think is has as large a proportion of large cars. The Burlington has more cars than we have. It is an older and longer line.

Q. Now, to get back to the increase of traffic that was to come to you from the Burlington road by reason of your acquisition of it. Do you wish to be understood as stating that

3925 because the Northern Pacific and the Great Northern purchased the Burlington road, traffic was actually created by that fact? Or did you mean to say that you would get a larger portion of the Burlington's traffic by reason of your ownership of the Burlington?

A. Not by any means. The object was to make it possible to carry out a clearly- and well-defined plan. If we depended upon joint tariffs, if we depended upon lines of railroad com-

ing here that had no interest in our road or we no interest in them—take, for instance, the St. Paul road, to illustrate, which has just been or is advertised as having been allied with the Union Pacific; the Chicago & Northwestern which comes here and has a contract with the Union Pacific; their lines reach away out to Omaha and into the Platte Valley; they have a direct interest in taking their business over their own lines and not bringing it here. Now, we wanted to be in a position where we were not subject to the good will or the changes of ownership of any railway; we wanted to be in a position where we could reach these centers, and to do that the Burlington gave more ground than any of the other lines, —practically, I think, as much as all of them. And it was to put us in a position where we would not be defeated in building up the traffic of these northern states and the northern line to the East. 3926 3927

Q. The question was so framed, Mr. Hill, that you were made to answer—it so appeared to me in reading it this morning and in listening to it yesterday—that by reason of the acquisition of the Burlington by the Northern Pacific and Great Northern, traffic was created. Now, you state, as I understand you, that by your control of that, you divert it so that you will get traffic that you formerly did not get, but some other route will lose, is that it? 3928

Mr. Young. He didn't say so.

Witness. That is not the question or a fair statement of the question, as I understand it, and I think it has not any reference to the testimony as given; but, then, I will undertake to say that that is not as I understand it.

Q. I ask you now, then, do you state that the acquisition of the Burlington by the Northern Pacific and the Great Northern will create traffic that would not otherwise exist?

A. It has created traffic. The figures show that the traffic has increased very materially. Now, how much of that traffic would have been created or would have existed, it is very difficult for me or anybody else to say. But we know that the traffic has increased, since the acquisition of the Burlington, to an enormous extent, and we know further that we are able, not to compete alone with railways, for that is a small matter in this business, but to compete in the matter of rates with 3929

3930 the ships going from New Orleans or from Galveston, or the railways carrying it anywhere, or in connection with any other system of transportation. Now, we are able to make a rate that will take that business. And it was that rate I had reference to, and that policy and that ability that I tried to make plain yesterday.

Q. Yes. Then, your traffic has increased since the acquisition, and because it has increased since the acquisition you attribute it to the acquisition?

A. We can trace a great deal of it to that.

3931 Q. Is it not true, Mr. Hill, that the railroads generally throughout the United States, all of them, have had their volume of traffic vastly increased in that same period of time?

A. I think that you will find upon examination that few of them have *doubled* their export business, and we have *more than doubled* our export business, and our general business has increased 33 per cent.

Q. What proportion of your entire business is export?

A. I couldn't say.

Q. What percentage?

A. I couldn't say.

3932 Q. Can you state what percentage of it is competitive, interstate?

A. I couldn't say; I have never seen the computation.

Q. Or you can't state what percentage of your entire traffic is local to your own rails?

A. No, sir; I have never made the computation. If I wanted the information it would not be very difficult to get.

Q. You say your export traffic has doubled. I thought perhaps I might get some notion of——

A. I happen to know the export traffic. My attention was called to it by the publication of the United States treasury

3933 figures, showing that there was an extraordinary increase in the export business from Puget Sound ports, much greater than that of any other part of this country. The department seemed to be quite rejoiced that they were doing so much business.

Mr. Grover. We have all those figures.

Q. Mr. Hill, speaking of the Burlington, it was testified to in your testimony taken heretofore and engrafted into this

case, that the Union Pacific interests (meaning Mr. Harriman 3934
and Mr. Schiff in particular, or one or the other) made an effort to purchase the Burlington in the fall, before you succeeded in negotiating its purchase. Is that correct?

A. Mr. Schiff told me that they had done so; in fact, Mr. Harriman told me they had.

Q. And that after you had negotiated or concluded the purchase of the Burlington, Mr. Schiff or Mr. Harriman came to you and wanted to participate in the purchase, to take a third interest,—or the Union Pacific.

A. That was before the purchase was completed.

Q. It was before; well, while you were negotiating? 3935

A. Yes, sir.

Q. You declined?

A. Yes, sir.

Q. Was the Burlington system in competition with the Great Northern before the purchase of it by the Great Northern and Northern Pacific?

A. No, sir.

Q. Was it in competition with the Northern Pacific?

A. No, sir.

Q. Was it in competition with the Union Pacific? 3936

A. On some of its lines. It was in competition with the Union Pacific; on some lines I think it was a connection or run in connection—joint tariffs.

Q. You said yesterday that the purchase of the Northern Pacific by hostile interests, or a raid on the Northern Pacific, would have left the Great Northern in a helpless condition.

A. A successful raid on the Northern Pacific would have left the Great Northern in a helpless position or condition. Under the conditions it certainly would.

Q. Will you please state just what you meant by that?

A. I meant that inasmuch—— 3937

Q. By the raid and in the hands of hostile interests.

A. I meant that inasmuch as the Great Northern was jointly and severally responsible for over 200 millions of dollars, being the purchase price of the Burlington stock, that with the Northern Pacific owning a joint interest in the Burlington stock, one-half interest; with the Northern Pacific

3938 in the hands of a rival transcontinental line having its interests in San Francisco and from Omaha through the Platte Valley to San Francisco, that they would be in the position to make the Northern Pacific and the Burlington (as far as they could influence the Burlington) subservient to their southern interests, and they would be in a position to prevent them from building up or aiding in the development of the business that the Great Northern had worked long and hard to establish.

Q. Well, if, say, the Union Pacific had got physical control
3939 of the Northern Pacific, as it got actual control of a majority of its combined capital stock,—suppose it had gone on and got, as you feared it might, or anticipated it might, physical control of the Northern Pacific property, they could not have carried lumber any cheaper to the East or cotton any cheaper to the West than you could? It would not have crippled you in that respect, would it?

A. How would we get to the prairies of Nebraska and Kansas and Iowa and Illinois?

Q. Just as you always have—by all the lines of travel that are open to you.

3940 A. They are not.

Q. Six lines out of here?

A. Any one of those lines, or all of them, could at any moment withdraw their joint tariff from us. We could not control the business a day longer than they were willing we should, and we could not undertake to build up a great, permanent interstate and international business, on any such basis. I think it would be ridiculous—the statement of it.

Q. Section 3 of the Act to Regulate Commerce would give you a remedy in that case?

A. But we have learned that the Act to Regulate Com-
3941 merce is a very peculiar act in the way it is enforced.

Q. Has either of these lines, the Chicago & Northwestern, the Chicago, Milwaukee & St. Paul, or the Chicago Great Western, or the Chicago, Burlington & Quincy, prior to your acquisition of it, broken through relations with you so that you could not get through rates to this territory?

A. The Milwaukee & St. Paul for years refused to give us

a joint rate at any of their junction points between here and 3942
Sioux City, and we cross them five times.

Q. When was that?

A. Every time we have ever asked them.

Q. What percentage of the traffic that the Great Northern handles either from the Pacific coast, east, or the Twin Cities, west, is destined for the middle west, for Colorado, Utah or Nebraska points?

A. That the Great Northern handles?

Q. Yes, sir.

A. The Colorado and Wyoming and that business is more over the Burlington from Billings. 3943

Q. Yes, but the Great Northern does not intersect the Burlington at Billings.

A. I spoke of the business as it affected those roads, and the Northern Pacific was one of them. Now, the State of Iowa is reached by the Burlington from here, the State of Illinois and the states east of Illinois; this lumber business now begins to seek markets as far south as Newport News.

Q. You might extend that argument on down to the Atlantic.

A. It does go to the Atlantic.

Q. But the question I direct you to is this: With your ex- 3944
ceptional facilities of being able by reason, as you say, of your low grades and the lower rates at which you carry this transcontinental traffic today than any of the other southern lines can afford to carry it, as you say, how would the possession of the Northern Pacific prevent your continuing to do that business which has built up your road and your empire?

A. The possession of the Northern Pacific by whom? By the Union Pacific?

Q. Yes.

A. Because if the Union Pacific controlled the Northern 3945
Pacific and controlled the Burlington to the extent that the Northern Pacific half-interest would control it, we would be deprived of any access that we could control for a moment longer than the good will of another company; and we could not go on building up a business on any such condition. And let me add, further, if I may, that it would have almost destroyed the value of the Great Northern property or its shares

3946 for its shareholders. I would have recommended them to sell their line at once on the best terms they could get.

Q. Competition would have been so severe you could not have stood it.

A. It was not a question of competition. It was a question of physical inability to reach the market. We would be shut out from the markets.

Q. What did you mean when you used the word "raid" on the Northern Pacific stock?

A. Well, the phrase is one that probably I borrowed from
3947 the common expressions in the newspapers,—an attempt to buy the stock or the control of the stock in the open market.

Q. Now, Mr. Hill, they got what percentage of the capital stock of the Northern Pacific?

A. I think they had altogether 78 millions of common and preferred.

Q. Out of a total of 155 millions?

A. Yes. They had a majority.

Q. And what percentage of the Burlington stock did the Northern Pacific and the Great Northern acquire?

A. Oh, 98 or somewhere in the neighborhood of very nearly
3948 the whole of it.

Q. You have stated that the Union Pacific interests endeavored to buy (they told you so) or to purchase the Burlington and they failed, and then after you had secured an option on it they came to you and endeavored to get you to let them have one-third of it, and you refused that?

A. Did I say one-third?

Q. Well, whatever percentage it was; I will withdraw that, I am not sure about that. That was the impression I had.

A. My recollection is a half.

Q. A half, is it?

3949 A. That is my recollection.

Q. Whatever it was. And that was declined. You said the Burlington system was not a competitor with the Great Northern or the Northern Pacific, but was a competitor of the Union Pacific?

A. Yes, sir.

Q. Now, when the Great Northern and Northern Pacific purchased the Burlington stock, was that a "raid?"

A. Not at all. It was done by the consent of the directors of the Burlington and by their advice to their share holders, and could not have been done in any other way. 3950

Q. When was it the Northern Pacific directors approved of your contract to purchase the Burlington?

A. I do not know. I do not know anything of when the Northern Pacific approved it. The Great Northern directors approved the purchase of the Burlington in April, I think, 1901.

Q. How long was that after you had contracted to purchase it?

A. Oh, about that time. 3951

Q. Had there been a corporate meeting, a directors' meeting, to consider that prior to your purchase?

A. I don't know. The matter had been discussed between the directors, and had been discussed——

Q. I am speaking of a corporate meeting; at a meeting of the directors, I mean, where the subject had been considered.

A. I could not say from recollection.

Q. What was your individual holding in the Northern Pacific?

A. At what time? 3952

Q. On the 1st of April, say, 1901.

A. Oh, between seven and eight millions.

RE-DIRECT EXAMINATION.

By Mr. Young:

Q. Mr. Hill, am I to understand you as saying that you made a contract for the purchase of the Burlington shares before a meeting of your directors?

A. Before a meeting?

Q. Before the meeting, in April, of your directors? 3953

A. Why, I couldn't make such a contract. I could make a tentative arrangement that was subject to their approval.

Q. And was that what you in fact made?

A. Yes, sir.

Q. And no contract was made and nothing to bind the Great Northern Company until it was passed on by the directors?

3954 A. I had no authority and could not do it, and the Burlington people would not take my contract if I had made one. It would require the act of the corporation.

Q. You have been questioned as to what effect or what injury the acquisition of the Northern Pacific stock by interests hostile to the Great Northern or hostile to the development of this Northwestern country, would have on the Great Northern Company. Now, I want to ask you what effect would such an acquisition of the majority or of the control of the Northern Pacific by a corporation which had greater interests in other directions than it had in developing the country
3955 traversed by the Northern Pacific, and making that property valuable,—what effect would that have on the minority stockholders of that company, including yourself,—on their property, their stock?

A. The value of the property would be destroyed. Its growth would be restricted. It would be controlled in the interests of another property or body for the reason that it would be restricted or might be restricted so as not to interfere with the growth of the other property. We were making great efforts, and very successful efforts, at that time to
3956 settle up all this northern section between the Great Lakes and Puget Sound, and bringing in an enormous number of people, many of these people coming from the line of the Union Pacific in Kansas and the Southwest, bringing them up here. And I remember one reason why they wanted to get a joint interest in the Burlington; they said we were getting too strong for them, we were going down into their country and taking people from there. That was one of the reasons they gave.

Q. Mr. Hill, will you state whether or not, so far as you know, there exists any agreement among the shareholders of
3957 the Northern Securities Company in regard to whether they would hold or sell their stock or what use they would make of it, whether in voting or otherwise?

A. There is no agreement of any kind between the shareholders, that I know of, or have heard of, and I do not know how any agreement would be effective unless it was made by a very large number or majority of the shareholders.

Mr. Young. That is all. 3958

Mr. Richards. That is all

The witness was excused.

JAS. J. HILL.

Subscribed and sworn to before me this 25th day of October, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

3959

The following is the testimony of Frederick Weyerhaeuser, taken from the record in the suit of the United States vs. Northern Securities Co. et al., as the same appears in Vol. 3 of the printed record at page 744 et. seq. and introduced by defendants herein as original evidence in this case:

FREDERICK WEYERHAEUSER, called as a witness on behalf of the defendants, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION. 3960

By Mr. Young:

Q. Where do you reside, Mr. Weyerhaeuser?

A. In this city,—St. Paul.

Q. What relation have you to the Great Northern Railway Company? What official relation to the Great Northern Railway Company?

A. Business relation.

Q. What official relation have you to the Great Northern?

A. I am a director of the Great Northern.

Q. When did you become a director of the Great Northern? 3961

A. About a year ago.

Q. What is your business?

A. Manufacturing lumber and selling it; dealing in lumber, manufacturing and selling.

Q. For how long a time have you been engaged in that?

A. Forty-six years.

Q. In what territory?

3962 A. In the Northwest, the East and South. The forests we have now in the South are mainly in Arkansas and Louisiana, and the forests West in Washington, and we have mills in Washington, Idaho, Illinois, Arkansas, Wisconsin and Minnesota.

Q. How extensive was you business the last year in quantity?

A. We shipped last month something like 120 millions. Probably during the year over a billion, say from a billion to a billion and a quarter.

3963 Q. Your concern is the largest manufacturer of lumber in the United States, is it not?

A. I don't know. They say so.

Q. You don't know of any larger one?

A. No, I do not. Now I am talking of mills I am interested in. I don't want to give the idea that I own those mills. I am interested in about twenty mills and two sash and door factories, etc.

Q. I am speaking of the concerns in which you are interested.

A. Yes, that is right.

3964 Q. Are you acquainted with the lumber supply in the Mississippi Valley?

A. Yes, sir; that is where I have been operating for forty odd years.

Q. How does the amount of standing timber in the Mississippi Valley available for making lumber, compare with that in former years.

A. It is getting very short; the supply is getting very low.

Q. About how long do you think that you can continue lumbering at a profit in this valley?

A. I think five or six years will wipe out most of our mills,
3965 though the last tree will not be cut for some time to come in these states. I am speaking now mainly of Wisconsin and Minnesota and Michigan.

Q. How is it with your own mills in this valley? Are they increasing or diminishing?

A. Diminishing. We get through sawing at Shell Lake this year and we are getting through at Haywood, so there are two mills less.

Q. And taking down those mills. 3966

A. We used to operate three in Rock Island and one in Davenport, Iowa; we now have only two left in Rock Island.

Q. To what part of the country are you resorting for a supply of timber in the failure of this Mississippi Valley timber?

A. We have been buying in Idaho, Washington and Oregon.

Q. What has been the extent of your purchases in Washington?

A. We own from 1,250,000 to 1,500,000 acres, in that state; about 200,000 in Oregon, and perhaps about the same in Idaho.

Q. Have you begun manufacturing lumber from any of that timber? 3967

A. Yes, sir; we manufacture in Washington, and manufacture in Idaho.

Q. Where is your principal market for the lumber which you manufacture on the west coast?

A. The northwestern states. I think probably we reach about 15 states and territories. We have shipped quite a little lumber from Washington to Jacksonville, Florida.

Q. But the great bulk of it is in the northwestern states?

A. Yes, sir.

Q. And what state furnishes the largest market? 3968

A. I think Iowa; and eastern Kansas and Nebraska. Illinois is quite a good market, too.

Q. And some, I suppose, in the Dakotas, and Minnesota?

A. Yes, we ship into Minnesota, Dakota, Idaho and other states.

Q. Over what railroads do you ship to those markets?

A. We ship pretty much all over the Northern Pacific, Great Northern and the Burlington and the different roads; we give them all some. Those are the principal roads.

Q. What part of Iowa do you ship the most lumber in respect to the lines of the Burlington road? 3969

A. Over the entire line; there is hardly a little place that we are not shipping some to. In some places we ship a good deal; it depends on the size of the town.

Q. I meant to what portion of the state of Iowa, whether to the northern part or the part traversed by the Burlington lines, if you can say?

3970 A. Well, we ship a good deal to Des Moines, Omaha and Kansas City; in fact, all over.

Q. What railroad in Iowa has the largest market for lumber along its line?

A. I always found the Burlington the best lumber line.

Q. In shipping lumber from Washington and other points on or near Puget Sound to points on the Burlington road, what advantage, if any, is it to be able to load your cars and have the lumber carried through on the same cars to its destination?

3971 A. It is a great advantage.

Q. Will you explain why, how it is an advantage?

A. When cars are not very plenty, the roads will not let us transfer them from their road onto other roads, and in place of transferring the cars, they transfer the lumber; they do not handle the lumber as carefully as our people do, and sometimes we have a big car load which they try to put into a small car, and they can't get it in, and there is often some left over, and the lumber is damaged more or less by reloading it and handling it.

Q. And what difference does it make, if any, as to your 3972 ability to obtain cars at all times?

A. Well, we have to wait until we get foreign cars for foreign roads. If they haven't got the cars for the points the lumber is consigned to, we have to wait until we get the cars, otherwise they transfer the lumber in place of the cars.

Q. Mr. Weyerhaeuser, does the Burlington road reach any of the pineries, as they are called, where timber is kept?

A. No, sir; the Burlington road does not.

Q. When lumber was obtainable in the Mississippi Valley as heretofore, from what points were places on the Burlington road supplied?

3973 A. From what points?

Q. From what points.

A. The Burlington road used to get the bulk of the lumber in Chicago, and haul it from Chicago. Since Chicago has lost its prestige as a wholesale market, why, they have got to go north for it and west, largely west.

Q. And at the present time, and especially in the future,

where must the country along the Burlington road look for 3974
its supply of lumber?

A. To Idaho, Washington and Oregon.

No cross-examination.

FREDERICK WEYERHAEUSER.

Subscribed and sworn to before the undersigned this 24th day of October, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

3975

The following is the testimony of George B. Harris, taken from the record in the suit of the United States vs. Northern Securities Co. et al., as the same appears in Vol. 3 of the printed record, at page 748 et seq., and introduced by defendants herein as original evidence in this case.

GEORGE B. HARRIS, called as a witness on behalf of the defendants, being duly sworn by the Examiner, testified as follows:

DIRECT EXAMINATION. 3976

By Mr. Grover:

Q. Mr. Harris, are you president of the Chicago, Burlington & Quincy Railway Company?

A. I am.

Q. How long have you been connected with that company?

A. With that company or companies which are now part of it, or owned by it, for the last 36 years; most of the time for 36 years.

Q. How long have you been connected with it as president?

A. Since the formation of the Chicago, Burlington & Quincy 3977
Railway, about a year ago.

Q. Before that what?

A. Before that I was president of the company which preceded that.

Q. The Chicago,—Burlington Railroad Company?

A. Yes, sir.

Q. And have been for how long?

3978 A. Well, I had been, as vice-president and afterwards president, for about ten years.

Q. What is the mileage of the Burlington in the state of Illinois?

A. About 1,500 miles.

Q. In Iowa?

A. It is about 1,400 miles in Iowa.

Q. How much in Nebraska?

A. About 2,400 miles. About 1,100 miles in Missouri; 200 in Kansas; 400 in Colorado, and I don't remember just now the Montana mileage; 200 and odd, I think; 215, I think, but
3979 I won't be certain; 38 miles in Minnesota and 223 in Wisconsin.

Mr. Richards: How much all together?

Witness: There are about 8,200 miles of main track, counting straight main track, and about 464 miles of double track.

Q. Will the acquisition by the Great Northern and the Northern Pacific of the shares of the Burlington restrain trade and traffic between the states and foreign countries?

A. On the contrary, I think that it will promote business very greatly and develop latent resources and enable forest,
3980 mineral and other products and resources to be utilized which are now idle.

Q. Speak on that subject with respect to general merchandise and manufacturing industries and products.

A. I think that the practical extension of the Burlington road to the Pacific Coast, by reason of its connection or union with these two lines (whatever you may call it) and the practical extension of those lines into the Mississippi and the Missouri valleys and throughout all the country occupied by the Burlington lines, by affording an opportunity to merchants and manufacturers to extend their markets, that they will do
3981 it, and that the opportunity to trade will be taken advantage of to promote business and commerce. I think in respect to one item that has been brought to my mind since Mr. Weyerhaeuser was on the stand—the lumber business; we have a little over 2,400 miles of track in Nebraska; there is not a tree on it except the trees and shrubs that have been planted there in hedges and in timber-claims; there is no merchant lumber; there is no lumber that is cut in Nebraska and sold

on the market; and lumber is a prime necessity. It is a neces- 3982
sity, to assist in settling up that country. People must have roofs over their heads, and they must have cheap ones, too, because they cannot afford to buy expensive ones. And anything that tends to put in good and cheap lumber into that territory is beneficial; we have a larger mileage than any other road and I think is distinctly an advantage to that country, as well as to the manufacturers on the Pacific Coast and to the transportation lines that distribute it. I think we felt that in settling up the country. I think the need of lumber is felt. I was in Nebraska, for instance, and drove over the
country before any rails were laid; there were only 50 miles 3983
laid west of the Missouri river when I went there, and people said that Nebraska was an uninhabitable country; there was no timber, there was nothing; there was good grass, an elegant climate; and I thought and others thought that the country would be habitable and be filled with a productive population. But lots of others thought we were simply boomers, as they do now, you know, about the development of these other western resources.

Q. What was the supply of fuel in Nebraska?

A. There is no fuel whatever in Nebraska, except I have 3984
known some of the Russian Mennonites, who came there, to burn grass, tied together with iron bales, as they did in the old country; and I remember we used to burn sunflowers there; I have seen a great deal of corn burned there, and since our lines have been built through there and we have developed coal west of that territory and Wyoming and brought it in from Iowa, why, coal is a pretty cheap fuel,—and from Colorado also.

Q. How about the lumber supply in the other states, in the other states through which the Burlington extends?

A. There is no lumber supply whatever on the Burlington 3985
lines, with the exception of hard wood, and only a limited quantity of that.

Q. From what section of the country must the lumber supply come to those dependent upon it along your line?

A. Lumber has got to come entirely from the Pacific Coast; there is no question about that in my mind. We get some lumber from the south, yellow pine lumber. Lumber used to

3986 practically all come from Chicago, and we hauled out an enormous quantity of it. I remember when I was a boy on the Hannibal and St. Joe Railroad I used to see about 20 cars a day being hauled out of Hannibal, and I thought the time would come when that continual drain, 20 cars a day, would simply ruin the country. There were scarcely any trees in it. There were mills then at Hannibal and Quincy and they have since been established, and then again mostly abandoned, at other points on the road, at Quincy, Rock Island, Davenport, Clinton, Lyons, Dubuque, McGregor, LaCrosse, Winona and
3987 elsewhere, and some of the smaller ones; those are the principal points, I think.

Q. What advantage is there or may there be growing out of the Great Northern and Northern Pacific ownership, over what would be the case if dependence was made upon joint tariffs for the exchange of traffic between the lines?

A. Well, in my opinion, it tends to develop these latent resources, to justify merchants and manufacturers in adjusting their affairs to do a continuous and a permanent business rather than one that may be cut off by anybody's volition from day to day, and they say, "That door has got to be closed."
3988 But ownership, common ownership, provides an open door and the means of access, ingress and egress, and people take advantage of it. Commerce flows in the line of the least resistance. It removes the obstruction.

Q. Speak in reference to agricultural products, if you will, and live stock.

A. Well, the Missouri valley, as is well known, and the Mississippi valley are great fields for the production of forage in all its forms; I think the best in the world, perhaps because I was raised there. It is a great corn country. All of the forms of stock feed is abundant, and it is probably the great-
3989 est place in the world to finish cattle, to bring up cattle and make good beef out of them. The cattle that are raised in the west very frequently come down there when the range is short of grass; they come down there to finish up on corn; come from all the western states, Oregon and Idaho and elsewhere, in great quantities.

Q. Now, of the ranges along the Northern Pacific and the Great Northern, in this connection.

A. Well, we have had a good many cattle down there to 3990
finish. Some years when there is a big crop they flow in more than in others, but it is a regular business, and it is promoted and continued by the opportunity to come and by the interest of the parties that they should come.

Q. The cattle are loaded on the ranges, on the lines of the Great Northern and Northern Pacific, and sent down there on the Burlington to feed and fit for market?

A. A great many of them are. We take our cattle up there in the spring, and they are the young cattle, they are raised up there to a certain age, and then they are brought back and 3991
finished on corn in the Mississippi and Missouri valleys.

Q. What is the market with respect to the sale of cattle and beef products on the Burlington?

A. I believe the Burlington rails reach every large packing point that I happen to think of now, except Sioux City. We reach Omaha, Nebraska City, St. Joseph, Kansas City, St. Louis, East St. Louis, Ottumwa, Chicago, and half-a-dozen other smaller points where cattle and hogs and sheep are packed in smaller quantities.

Q. Those places furnish, do they not, a large market for the cattle grown, fed or fattened on the lines of the Great North- 3992
ern and Northern Pacific?

A. Yes.

Q. And in the ranges?

A. Yes.

Q. What effect will attend the transportation of lumber on to the Burlington and the territory tributary to it, as affording return traffic over the Great Northern and Northern Pacific, increasing the volume and the reduction of rates?

A. Well, it is obvious that a wagon which can go loaded both ways can afford to do business at a lower price than one which has to be hauled one way empty; and the lumber busi- 3993
ness, affording a constant supply of tonnage eastbound, enables the company to do westbound tonnage and tempts us to do westbound tonnage at the lowest price we can afford to in order to promote that business. We accomplish various things by doing that. We give the people of Nebraska and Iowa, where we have a great many lines, cheap lumber, which promotes trade there, promotes settlement. They build

3994 houses, make improvements, and it is an added inducement to people to settle there where we need settlement; and, indirectly, it helps us in other ways. Those people have got to wear shoes and clothes, and have tea and coffee.

Q. Speak with reference to coals and minerals on the line of the Burlington.

A. Well, with reference to coal, the Burlington company has in Illinois, as I say, about 1,500 miles, something more. I haven't been exact in these figures, but that is substantially correct. We reach a great many mines from the Streator district on the north to the district of which Centralia is the
3995 southernmost point in the south, and I don't know how many mines we reach in that district, but a great many; and some very large ones. A few years ago—a very short time ago, in fact—the coal supply on the Burlington lines in Illinois exceeded the demand to such an extent that the coal operators were beginning to be a little restive about it. They thought we ought to be able to hustle around and provide a market in some way, do something about it. But it was somewhat difficult to do that independently. The soft coal does not stand a great many transfers; it is friable, deteriorates rapidly, and
3996 must be taken from the mine to as near the point of consumption as possible without car transfer. So this country up here, being without coal—

Q. You mean by "up here" along the Great Northern and the Northern Pacific, Minnesota and Dakota?

A. Yes, this northern country and especially the lines of those two roads. We thought that that would afford us a permanent market for the large amount of coal that is to be had there at a moderate price.

Q. And you would have an advantage, through shipment and exchange of cars, over the fluctuating conditions attend-
3997 ant upon a joint rate?

A. Well, in preparing for a very large business you could not provide cars, nor could the miners afford to work the mines and make the large expenditure that is necessary to do it in the most economical and efficient manner when the market was liable to be changed, or, as I said before, the door was liable to be shut any day by somebody saying, "Well, we think we will turn this current of commerce somewhere

else; we would rather have it from some other place." The 3998
field, we think, is the largest, the cheapest. It will promote the mining of coal down there and the use of coal up here, and we can do that better than anybody else can.

Q. With respect to ores smelted at points along the line of the Burlington?

A. Well, there are precious metals at various points on the Burlington road. The largest deposit of mineral on the Burlington road is in what we call the Black Hills country in South Dakota, in the western part of South Dakota, Deadwood, Hill City, Lead City, Custer, and all that country in there, it is all mineralized. It is all low-grade. There are very few great 3999
bonanzas in mines. But there is an enormous amount of highly refractory ore that costs a very large proportion of its entire value to reduce, and it is practically impossible to reduce that ore by using a barren flux or flux which carries no value. It must have an ore which is complementary and which also carries value to act as a flux to enable its treatment. Some ore has been heretofore procured from the western country off the Northern Pacific to complement the refractory ores of the Black Hills, but it was practically impossible to procure the establishment of the necessary smelters down there. That 4000
business is all right today, but it might not be tomorrow. Somebody might say tomorrow, "Well, I guess we don't care to exchange cars; we don't care to pro-rate with you, you had better go some place else and get your wet ores." Well, the dry ores cannot be treated so advantageously; they can be treated by cyanide and chlorination and other processes, but they cannot be treated so advantageously as they can with ores that are complementary to them. The people with whom we talked about the establishment of mineral reduction works said that. They said, "We can't go in there and make an enormous expenditure and leave it liable to be changed at any 4001
time; we don't know just how long it will last." Partially for that reason we had negotiations under way for the purpose of making a contract for a definite term of years, for ten years, for instance, so as to in a measure satisfy those people until fortunately, as I thought, and others thought—

Q. A contract with whom?

4002 A. A contract with the Northern Pacific, for an absolute connection at that point so that neither party could close the door and that the merchant or manufacturer might be safe, for that term at least, in settling down there with his business.

Q. You refer to the junction with the Northern Pacific at Billings?

A. At Billings; I was speaking of that, because I had in mind the Black Hills ores.

Q. When was the line extended to Billings?

4003 A. Well, I don't remember exactly; it was about 1892 or 1893.

Q. What justified the building to Billings in the mind of the Company?

A. Well, it was very hard times then, and I was rather anxious to induce the directors of the company to build a railroad. I rather liked to build them, and they sometimes didn't like to operate them, but I got them to do it occasionally. I met a gentleman who was then connected with the Northern Pacific Railroad, and he said that Mr. Weyerhaeuser had told him that the lumber that would flow over a line
4004 built in that country, to connect at or about Billings (the exact point of connection not being fixed) would be a very valuable thing for the lumber merchants of the West, for the settlers in Nebraska, for the railroads, and perhaps incidentally that he could make a little something out of it himself. So I mentioned it to some of our directors and finally brought them together with some of the Northern Pacific people, and it was discussed. And that was one of the controlling considerations which led to the building of that branch up there; the idea being that, with the connection there, the Northern Pacific would practically be the western extension of the Bur-
4005 lington and the Burlington would be the eastern extension of the Northern Pacific to the field that it reached and especially the Missouri valley where it made a short and direct line.

Q. Now, the contract to which you refer related to making permanent an exchange at Billings between the Burlington and Northern Pacific in the handling of traffic?

A. A contract was to be as permanent and definite as possible in its terms, providing that the Northern Pacific and the

Burlington should co-operate in doing all that could be done 4006
to promote the free and copious flow of traffic through that gateway.

Q. How long was this matter of a contract considered? How long prior to the purchase of the stock of the Burlington?

A. Well, I don't remember dates so very clearly, but it was a comparatively short time. The contract was under consideration and this other matter came up, and of course that furnished us so much better and so much more permanent and unbreakable an arrangement that the contract of course was abandoned; they never thought any more about that.

Q. Now, what advantage was thought would be derived to 4007
the Burlington shareholders, or those interested in the property, by the sale to the Great Northern and Northern Pacific instead of to other interests?

A. Well, there was more or less discussion about that, of course; and, in view of some other opportunities and possible opportunities, it was thought by the directors that it would be necessary for the Northern Pacific and the Great Northern to actively use all of the Burlington lines in order to utilize the investment; and if such a thing should happen as that the property should come back, that it would come back 4008
in first-class condition, that there was no part of it that the Northern Pacific or the Great Northern could afford to permit to fall into disuse. It would be to the interest of those companies (that would be the best bond that it would be done) to develop the territory, and they therefore thought that the paper that they would get and offer to their 14,000 stockholders—about 15,000 stockholders—would, on the whole, be a better piece of paper than they would be likely to get elsewhere.

Q. What points are the principal smelters on the Burlington, where are they located?

4009

A. Well, the largest smelters on the Burlington road are at Denver, Omaha, Aurora and Chicago. The Chicago smelter, I believe, is not doing now as much as the others. There is one thing that I happen to think of now in respect to ore or minerals that I didn't mention: the drift of Illinois coal north, that we hope to be able to establish, we hope may be about equal (and very large in volume) to a drift of ore south,—iron

4010 ore from the deposits reached by the Great Northern and Northern Pacific, and that the union of interests makes it feasible to provide equipment to prepare for the business and to do it, and we already have assurance from some parties that they will engage in that business on a scale of considerable magnitude.

Q. At what point?

A. Well, in the Mississippi Valley, down in the vicinity of St. Louis.

Q. The ore you now speak of is the iron ore—

A. The iron ore.

4011 Q. Of the Mesaba ranges?

A. Yes.

Q. Going to the Mississippi Valley to be smelted, and coal returned in the cars?

A. Yes, sir.

Q. What effect would such a transfer and exchange in traffic have upon rates, stimulating the business?

A. Oh, the general trend of transportation prices, that is the price received by the carrier for services, is downward, and we must pepare to meet it and we are preparing to meet

4012 it. In fact that is a large part of what we have been doing for the last two or three years. And all this business (this ore business and the coal business and the lumber business and all other business) must be done at the very lowest price, and all barriers must be taken away. The lowest price and the best service sets the pace for everything and everybody else; they have to come to it or drop out.

Q. And the lowest price rates come from being able to load trains both ways?

A. To load both ways.

Q. With large train-loads and low grades?

4013 A. That is obvious.

Q. What manufactured products or interests on the line of the Burlington are such as are demanded in interstate and Oriental trade?

A. Well, there are—in fact, in the first place all articles that are produced from iron and steel I believe are produced on the Burlington road, many of them in large quantities and some of them in small; implements, vehicles of all kinds,

engines, boilers, fixtures, steam and water pipes and fittings. 4014
It would be very difficult to enumerate them. We have got one town I believe where there are about 400 factories. Now you would be surprised to go into the freight house and see the things that are produced in that town. I remember one thing: there is a man there that makes incubators. You go into the freight house at any time, and I guarantee you will find incubators going to every civilized nation in the world,—a small one here and there—big and little.

Q. Now there are large rail manufacturing plants, are there not?

A. Yes. 4015

Q. Nails and wire?

A. Yes. The Missouri towns are all drifting into manufactures, and on a considerable scale, too. The markets have moved west. With the movement of the markets westward a great many manufacturers have moved west. Manufacturers who were in the Hudson Valley a few years ago are now found in the Mississippi Valley and some of them in the Missouri Valley.

Q. You reach in fact the largest manufacturing points in the State of Illinois, do you not?

A. Illinois has a very large manufacturing interest, and I 4016
believe that we reach from eight-tenths to nine-tenths of the factories of the state. We have, or did have a short time ago, the largest mileage in the State of Illinois of any railroad in it. I am rather inclined to think that the Illinois Central at the present time has about as much or possibly a little more, but we have over 1,400 miles.

Q. One thing more I want to ask you now; that is in reference to cotton goods, raw manufactures and the export of it, as respects the Burlington.

A. Cotton goods of various kinds are manufactured in some 4017
considerable quantity and the manufacture is increasing. I speak now of the manufacture of the cloth into articles of various kinds at St. Louis, Kansas City and St. Joseph especially, and there are other places where it is increasing considerably. The cloth is manufactured at Denver (cotton cloth) in large quantities and we are hoping to promote that trade very greatly and believe that the opportunity to trade

4018 without obstruction (in fact helping it) will promote that business, as it does all other branches of trade.

Q. Now at what points do you connect with rivers and lines leading to the south, giving you in that way access to the cotton fields?

A. Well, we connect at some points west of the Missouri river with the Missouri Pacific, Atchison, Topeka & Santa Fe; and at the Missouri river with all the lines that extend from the Missouri river to the Gulf; and at St. Louis with all the lines that extend to the Gulf and also to the Atlantic sea-
4019 board; and also have a connection with the river there and a very extensive river frontage. Our scheme has been laid out at St. Louis with a view to some extent of the river and its increasing importance.

Q. Well, you have connection with the river and rail lines reaching all the cotton-producing states?

A. Yes.

CROSS-EXAMINATION.

By Mr. Day:

4020 Q. Mr. Harris, when you were stating the mileage of the Burlington, I don't recall what mileage you gave that the Burlington system had in the State of Minnesota.

A. I think about 38 miles; about 40.

Q. And in the Dakotas?

A. In South Dakota—well, I don't remember; I ought to know, but there are so many things I ought to know and don't—you may call it 200 miles.

Q. And in North Dakota?

A. No, we have no miles in North Dakota.

Q. And what in Montana?

4021 A. Well, it is about 145 miles from Sheridan to Billings, and we built about 120 miles from Toluca down into the Big Horn Basin, and that is (a part of it) in Montana, and a part of it extends down into Wyoming. I should say—oh, you might call it 220 miles perhaps. That is approximately. I will give you all these figures exactly if you desire to have them put in the record.

Q. No, you have been giving approximations.

A. Yes. 4022

Q. I wanted to carry you on into these other states that I didn't know you had spoken of. Prior to January 1st of 1901, had it been discussed by the board of management of the Burlington road to extend the Burlington on farther into the Northwest?

A. No, there hadn't been any serious discussion of that for a long time, except to make some connections which were then considered and which are now being considered and may be or may not be done as a determination is reached hereafter.

Q. My question was whether it had been discussed prior to January 1st? 4023

A. I don't think it had been seriously discussed.

Q. By the management or board of directors?

A. I had to do with it I think individually—I don't claim to have had all to do with it, but I was in active charge of all the property of the company and the things that were done and not done were frequently, perhaps usually, on my recommendation.

Q. It had been in contemplation to do some building to the Northwest? 4024

A. North of Billings, you mean?

Q. Yes.

A. We had thought of building and we had made some surveys, and are still making some surveys, about a line running north of there to or for a connection with Great Falls. With that exception——

Q. Now I am directing your attention to a period of time prior to January 1st, 1901.

A. Well, since what time before that?

Q. Prior to the negotiations for the purchase of the Burlington by the Northern Pacific and Great Northern. 4025

A. Well, ten years before that (in round figures) we made reconnoissances through that country, but we had decided not to build. There hadn't been any recent serious consideration of building into that country.

Q. But I am asking you now whether it had been considered. Had it not been considered by the board of directors, and the subject discussed, looking to the building of the Bur

4026 lington on to the north, to connect with the Great Northern there?

A. I don't remember that it had, Mr. Day. I don't think it was ever seriously discussed in the board or discussed at all for that matter. We had made reconnoissances all over that country, as we had all over every other country in the western country, but that was a matter of information. We have always been doing that, simply to have it in case we ever wanted it in the future, without any serious present intention.

4027 Q. When was the survey made in reference to Great Falls?

A. Well, we have been polishing it up quite recently.

Q. No, I am asking you when it was first made. I am speaking now of a period prior to the purchase of the Burlington road by the Great Northern and the Northern Pacific.

A. Well, sir, we made a reconnoissance across there but we did not make what we call a survey; we didn't finish it up, we didn't tie it together, but we sent a man across there with an aneroid barometer and on horseback; he probably got a pretty good idea of that country; and followed it up with a little party just to make a reconnoissance, and I think that

4028 was—oh, that might have been about the time that we built to Billings. That was a little before the time we built to Billings. I remember it now. We graded a track across the Northern Pacific tracks at Billings.

Q. Now state what other preliminary surveys were made under the direction of the Burlington road looking to its extension into the Northwest territory, north or west of where it now has its line.

A. We never made any at all.

Q. Was that under discussion or contemplation—extending it—by the board of directors?

4029 A. It never was to my knowledge seriously discussed, and I don't think it would have been discussed unless I had known it.

Q. How long were you president of the Burlington road, the Chicago, Burlington & Quincy Railroad Company?

A. Oh, about a couple of years, or such a matter.

Q. Was it contemplated to extend the Burlington westerly

over towards the Pacific coast, say from Denver northwest or 4030
west?

A. We made surveys; the Burlington Company made surveys from Denver in a westerly direction, oh, twenty years ago.

Q. Any surveys, preliminary or otherwise, subsequent to that?

A. Yes, we have looked the country over there at various times.

Q. Well, just tell now what has been done, what was in contemplation.

A. Well, there hasn't been anything done in recent years. 4031

Q. What was contemplated by the board of directors or the management of the Burlington road?

A. Nothing by the board of directors. The management was always exploring the country, sending people out to make preliminary surveys, so that in case the question ever should come up seriously the management would be able to say to the directors, "Why, these are the facts."

Q. You explored this western and northwestern country by engineers or people competent to do it, in anticipation that your board might sometime wish to take up the subject? 4032

A. In case the time ever came when we desired to reach the question or the board asked for it we wanted to be able to say to them, "Gentlemen, here is what we know about it."

Q. To recur to the lumber question, the paucity of lumber in Kansas or Nebraska or portions of those states that the Burlington rails reached, before the merger in 1901, were Kansas and Nebraska points on the lines of your road supplied—its demands supplied—with lumber?

A. Why, of course there was lumber there; people could not exist without it, but this gave another source of supply of superior lumber at a moderate price. 4033

Q. What source of supply?

A. The northwestern country.

Q. Particularly what do you mean by that? I ask for information.

A. Well, that lumber could not get into that country before that connection was made.

Q. What lumber?

4034 A. Well, the Oregon and Washington,—the lumber west of the Cascade range.

Q. Does it go to Nebraska now?

A. Quite freely.

Q. What character of lumber is that?

A. Well, there are all kinds of lumber that go there.

Q. Well, what is it you bring from Washington and Oregon to Nebraska?

A. General merchant lumber, all kinds. I could not give you a schedule of the stuff that comes in there. I presume the lumber dealers could do that.

4035 Q. You are testifying to your knowledge of the subject and you are the witness. I want the basis of your own information, your own statement.

A. Well, I noticed very shortly after that connection was made that there were stocks of lumber along there, and I was informed that it was Oregon lumber; and I think I noticed an improvement in the way of houses and corrals and all that sort of thing; that was due, perhaps, to an additional supply of lumber and partly to better times. Nobody could figure it out and tell you exactly how much was due to each, but we

4036 thought some portion of it was due to that fact.

Q. How was that brought to Nebraska?

A. By Billings.

Q. By way of Billings?

A. Yes, sir.

Q. Did that come off the rails of the Great Northern?

A. It came off the rails of the Great Northern, a part of it off the Great Northern; that is, it didn't come to us from the Great Northern rails, but I have been informed that some of the lumber originated in the western country on the Great Northern and was transferred over to the Northern Pacific

4037 and brought down to Billings.

Q. Is that the short route from Oregon points to Nebraska, the points in Nebraska that your rails reach, to come by way of the Great Northern and Northern Pacific and Billings?

A. I think that the Northern Pacific and our line form a short route not only to Nebraska but to the Mississippi and the Missouri valleys.

Q. Well, my question was whether that was the shorter 4038
route from Oregon points, where this Oregon lumber came from, to Nebraska?

A. I think it is.

Q. By way of Billings?

A. Yes, sir.

Q. How much shorter is that than by coming by your western route?

A. That is by way of——

Q. The Oregon Short Line, say.

A. The Oregon Short Line and Denver?

Q. Yes. 4039

A. Well, our connection there was by the D & R G (Denver & Rio Grande), our principal connection, and the Billings connection was several hundred, perhaps 200 miles. I would prefer not to testify to that because I don't remember the exact distance.

Q. Shorter than the D. & R. G.——

A. Yes.

Q. —which you say was your principal connection?

A. Yes, sir.

Q. But was it shorter than the shortest route that was 4040
open to you by way of the Short Line?

A. I am quite positive it was shorter than the short route.

Q. Quite a substantial difference?

A. Yes, quite a substantial difference.

Q. Any difference in the rate?

A. I don't remember about the rates.

Q. You don't testify, then, that the lumber was laid down to the people of Nebraska at any lower rate by reason of this——

A. Yes, I do.

Q. Well, what was the difference in the rate? 4041

A. I can't tell you what the difference was, but I do know there was a material difference in the rate, a very large difference in the rate, after we had made this arrangement for the through rate to Omaha. This stuff was brought from its origin to the Missouri river and all points west of there at a rate which was very much less than that lumber was ever laid down on our lines before that time.

4042 Q. When was this?

A. Just after the opening of the Billings line.

Q. You state that your published tariffs were lower, from the Pacific coast, say Portland, on Oregon lumber to Nebraska, by way of the Billings route, than your published rate by way of the other route?

A. No, I didn't say that.

Q. I am asking you if you do say that?

A. No, I don't. I don't remember what it was. I do remember that the published rate was reduced after the—at
4043 least the published rate that was established; I don't know it was reduced, because I don't think there was a rate in between those points before; but when the Billings line was established and the connection made at Billings, the rate on lumber from the Oregon district to the Nebraska territory reached by the Burlington road was introduced and it was lower than any previous rate.

Q. The rates, when they were established, were uniform by all the lines?

A. I can't say that, Mr. Day; I don't remember.

Q. On the lines that were open to you.

4044 A. I can't say that; I don't think they were. I think we were able to make lower prices, we certainly were to a very large part of our territory (and I think all of it) by the Billings line than we were otherwise.

Q. When was this route open to the Billings line?

A. I think about 1893.

Q. Oh, you are speaking of that point; is that when the reduction was made?

A. When the reduction was made.

Q. Oh, at that time. You are not speaking of the time of the merger?

4045 A. Oh, no.

Q. The rates from points on the Pacific coast to points on the Burlington line in the State of Nebraska, the published rates, are they any different by your western connection (your Denver connection) than by your other connections?

A. I couldn't testify to that without examining the tariffs. I did have all those tariffs and rates in my head, but I haven't got them now.

Q. The facilities over the Burlington for getting coal to St. 4046
Paul and Minneapolis,—do you wish to be understood as stating they are greater to-day, by reason of the merger, than they were before?

A. I think they will be very decidedly greater.

Q. I am asking you what they are in fact.

A. What they are to-day?

Q. I am asking about facts, and not your speculations as to the future.

A. Well, there has been some change. We have been spending considerable money in reducing grades, putting in 4047
sidetracks to accommodate longer trains, and that work is partially done now.

Q. You have been doing that for years, extending——

A. Not on any such scale as we have been for the last——

Q. Do you wish to be understood as stating that coal that was brought by the Burlington to St. Paul and Minneapolis from the Illinois coal fields before the merger was unloaded and reloaded here?

Mr. Young. One minute. I would like to know what is meant by "the merger". We have heard a great deal of that. I don't know that there is anything in the pleadings about 4048
that.

Mr. Day. Mr. Harris used that himself, or a similar term.

Mr. Young. I don't think he used that term. I think this is the first use of it.

Mr. Day. No, I beg your pardon. The witness knows precisely what I mean.

Mr. Richards. He used the term "union",—the union of these lines.

Mr. Griggs. The joint purchase of the Burlington. I think the criticism of Mr. Day's use of that term is just, because it does not convey any idea as to whether he means the joint 4049
purchase of the Burlington or the formation of the Northern Securities. I suggest you make the time definite by some other phrase.

Mr. Day. Well, the witness seemed to understand. He was responding to that term for some time before.

Witness. Oh, I supposed—I am kind of a mind-reader, and

4050 while I didn't know what the word meant, I thought I knew what you meant. (Laughing.)

Mr. Day. Well, I am perfectly satisfied with Mr. Harris' response to my question.

Witness. That is all right. I will tell you anything I know, my mind is perfectly open.

The following question was read to the witness. Do you wish to be understood as stating that coal that was brought by the Burlington to St. Paul and Minneapolis from the Illinois coal fields before the merger was unloaded and reloaded here?

4051 A. I don't know that it was all unloaded and reloaded here, but I do know that at times it was unloaded and reloaded here, and I think that some degree of common interest will prevent that and create an economy. That is my opinion about it.

Q. You are speaking as to the future.

A. And that we have already, to a very considerable extent, been preparing for that. We have purchased cars, additional ones; we have extended some sidings and are still extending them and making arrangements so as to haul long

4052 trains without delay.

Q. Coal that came by the Burlington road, destined for the Great Northern road, prior to the union or prior to the purchase of the Burlington, coming in carload lots, was bulk broken here?

A. There was no permanent rule about that. It depended on the conditions from day to day. One day there might be plenty of cars and the Burlington would say, "We will let our cars go through;" another day the northern lines might have a surplus of cars and they would say, "You can load all our north-bound cars with coal." But there was no permanent

4053 arrangement for doing this to-day and to-morrow and all the days after that in the year, as we are doing it now.

Q. The general rule was not to break bulk?

A. There were times when it was all broken, and when we would not let our cars go through and they would not give us cars to go south; when the Burlington wouldn't let their cars go north and the other ones wouldn't let their cars go south. There was no rule about it; it simply depended on the

will or volition of the superintendents and the car men who judged the situation from day to day. 4054

Q. Who controlled their volition, their determined judgment?

A. The ultimate control was in the board of directors, and that sifted down through the president and manager and superintendents and trainmasters.

Q. Who controls it now?

A. Well, it is still in the board of directors, I guess.

Q. Yes, where is the change, then?

A. There is no change whatever as far as that is concerned. The roads are still absolutely controlled,—our road is still controlled by its board. 4055

Q. What outside force has entered into it?

A. What outside force? Do you mean what persons?

Q. Yes,—that has changed the policy or you would expect to change the policy. What has changed the policy?

A. Simply a change in interest, a union of interest.

Q. And how has it manifested itself?

A. Well, it has manifested itself by our decision that the business is likely to be permanent enough so that we can buy engines and cars and make physical changes in the roadway to meet this business that seems probable. 4056

Q. Who has given any instructions regarding those facilities?

A. The board of directors.

Q. The who?

A. The board of directors.

Q. Who else?

A. Nobody.

Q. Have you had any instructions from the board of directors?

A. Any formal directions from the board of directors? 4057

Q. Yes; different from what you had before?

A. Oh, no.

Q. Whom do you look to now, who is the directing man that tells you what to do or what shall occur?

A. Well, there hasn't anybody told me what to do. I have trusted in some degree to common sense, thinking perhaps that I had a little bit of it.

4058 Q. No doubt of that, Mr. Harris, I have no doubt of your ability as an operating railroad man and as a traffic man. But you now have two masters. Who directs your policy, the policy of the Burlington road?

A. The board of directors is charged with the duty and has the power of directing the president and all the officers.

Q. The board of directors of what road?

A. The Burlington & Quincy.

Q. The Burlington & Quincy Railway Company?

A. Yes.

4059 Q. Who composes the board of directors of the Burlington & Quincy Railway?

A. Well, I will give you a list of them.

Q. Well, name some of them that you can think of.

A. Well, I am a member. Mr. Hill is a member, Mr.—let's see, have you got the list there? It is a very simple matter, but I don't——

Q. Who composed the executive committee of your board of directors?

A. Mr. George W. Perkins and Mr.—I am on the board. Only been to a few meetings.

4060 Q. Mr. Harriman a member of your committee?

A. Yes.

Q. Of the executive committee?

A. Yes.

Q. Whom do you consult with on the committee? From whom do you receive instructions regarding the management of the property or how these facilities that you have been speaking of are to occur in the future?

A. I have consulted with everybody. I have consulted freely with Mr. Hill.

Q. Yes. Now, who else?

4061 A. I suppose, being a mind-reader, as I said before, that that was what you desired, and it is all right. I haven't received any instructions. I have been told to—the directors in a general way have made me president of the company and I am expected to go on and do whatever I think best. There has been no radical change of any kind or character, if that is what you desire, so far as I know.

Q. Well, have you received any instructions respecting any changes that are to be made that did not exist before, under the old management? 4062

A. I can't recall any just now.

Q. What members of the board of directors have you discussed the policy of the Burlington road with?

A. Oh, when I have been in New York, the few times I have been there, with all of them. If you will just give me a list or if I could look it up——

Q. I am asking you respecting your recollection. I have no objection to your looking at the list.

A. Well, just for the minute I couldn't remember. I have talked with all of them. 4063

Witness was handed a piece of paper by Mr. Young, on which was written the following: "Ex-Com., Harris, Hill, Clough, Perkins, Schiff, Harriman."

Q. Have you talked to them when they were sitting as a board?

A. As a board and individually.

Q. How often has the board of directors of the Railway Company met since you have been president of the new company? 4064

A. Oh, I couldn't tell you that, without examining the record.

Q. How often have you met with them?

A. Oh, I have been in New York I suppose four or five times.

Q. Have there been four or five meetings of the board of directors of the Railway Company since you have been president?

A. Well, now, I couldn't tell whether the meetings were formal meetings of the board or simply informal meetings with the members, but those things I haven't laid any great stress upon because a man as a member of the board would act in the same way as he had already expressed himself as an individual. I have never required that he should clothe himself with the authority of the board in discussing matters. 4065

Q. Mr. Harris, sometime ago you were a witness and testi-

4066 fying regarding the Burlington Railway Company, a considerable time after its organization. My recollection is you testified at that time that there had been no meeting of the board of directors of the Railway Company, certainly none at which you had been present. I would like to know now how many meetings of the board of directors of the Railway Company there have been, if any, since you became president.

A. Well, there have been meetings, but I can't tell you without consulting the record. I can't tell you the number.

Q. Well, do you state that you have or that you have not had any instructions from those whom you regard as your
4067 superiors in the management of the Burlington property, involving a change of the management of that property, since its acquisition by the Northern Pacific and Great Northern?

A. That is a pretty broad question, and I shall answer it broadly by saying that I don't remember to have received any orders or directions as to a change in the policy of the company. Questions of physical adjustment, and all that sort of thing, have been talked over.

Q. After the purchase of the Burlington, were the rates on lumber by way of Billings to Nebraska and Nebraska points
4068 (interior points) changed?

A. I don't remember whether there have or have not been any changes in the rates. The question with us was of maintaining the connection and of being able to increase the business and increase the supply of lumber, as well as getting it cheaper.

Q. I understand you to say that you don't know whether the rates have been lowered or raised?

A. I can't tell you that.

Q. All these routes from the Pacific coast to Nebraska that are open to-day were open before the merger were they not—
4069 before the union?

A. Well, there is a question as to what "open" means. If it is a permission to contribute business, why that is one thing. They are all open. If it means a reciprocity, which is the only condition under which business can be successfully done, there hasn't been any. Business cannot be done simply by saying, "You may do it." There must be some reciprocity; there must be an exchange; there must be a tonnage in both

directions; there must be a desire on the part of the buyer 4070
and the seller, as in any commercial transaction.

Q. At how many points did the Burlington system touch the Union Pacific system?

A. Well, I couldn't tell you that without looking at the map. There are a great many points.

Q. Can you give an approximate notion?

A. Well, there is Kansas City, Beatrice, Omaha, Grand Island, Kearney, and I don't know how many other places where there are small junctions or crossings; a good many places, mostly in Nebraska; some in Colorado.

Q. Prior to the purchase of the Burlington, was the Bur- 4071
lington by the way of Billings in competition for Pacific coast traffic with the other lines?

A. Why, the Burlington did all the Pacific coast business it could by the way of Billings, and to the extent that it got it away from other lines of course it was in competition with them. Yes, all lines that reach the Pacific coast, I suppose, competed for the same business we did by the way of Billings.

Q. What proportion of your Pacific coast traffic (north Pacific coast traffic) went by way of Billings?

A. I can't tell you. Well, all the North Pacific coast busi- 4072
ness that we controlled at that time in the Missouri Valley, a large part of it in the Mississippi Valley, I should say south and east of Burlington, went by the way of Billings.

Q. As compared by your Denver route, (by way of Denver), which route took the most of your Pacific coast traffic—North Pacific coast traffic?

A. Well, of the north Pacific coast traffic I think—I have no doubt—without being able to testify exactly—that the bulk of the business went by the way of Billings. I say a very large majority of all of it, no question about it.

Q. Is Billings the terminus of the Burlington in the North- 4073
west?

A. Yes.

Q. By what route did it then pass to the Pacific coast?

A. Over the Northern Pacific.

Q. Do you maintain any agents at Seattle or Portland or Tacoma?

A. Yes.

4074 Q. How many?

A. Well, we have an agent in Portland who has general charge and jurisdiction over all the other points, and we have an agent in Seattle and one in Tacoma and I think one in Spokane and I believe one in Butte. It was so a little time ago, and I don't think there have been any substantial changes; there may have been one or two put on or possibly one or two taken off, I don't know, I don't think of any; I don't think of any changes.

Q. You stated that the general trend of rates received by
4075 the carrier has been downward. Do you mean the published rates or——

A. Yes, I mean the published rates. The business is getting to be more and more so that it is conducted in public. There is less and less secret business all the time, and I hope the day will soon come (with your assistance and others who are interested in the subject) that there will be none at all. I don't want to see it. I want everything done right out in public—publicity for everything in regard to all these carriers, as far as I am concerned. That is what I believe in.

Q. Could you give a list of the articles on which the pub-
4076 lished rates have been reduced?

A. I could not. There is a long classification. And in a general way, the amount that we received is decreasing per ton.

Q. You spoke of the class rates or classification. Is it not a fact that on the first of January, 1900, a new classification went into effect in the United States, north of the Ohio river, whereby more than 500 articles were taken out of lower classes and put into higher classes?

A. Well, I heard you say so yesterday and I am ashamed to say that is the first information I had on the subject. I don't
4077 know whether it was so or not. And in explanaton of that I will say that I haven't been quite as close to that subject as I was a time ago. I don't know quite so much about rates and classifications as I did when I was living with them every day.

Q. Now, when you were testifying as to your opinion of the advantage of this union—the advantages of this union,—were you speculating as to the future or were you stating advantages that have already accrued to the public?

A. Well, I think they have accrued in a small degree, but 4078
to no such extent as they are likely to accrue when we get through talking about it, when all these things pass away (as I think they will), when people are satisfied to settle down in business and when the question as to whether things that have been done and put together are going to stay together or going to be torn asunder; when merchants and manufacturers feel that they can settle down and do business to-day and to-morrow and forever without having the question raised by somebody. I have no question about it, but some others have. These manufacturers say, "Well, we don't want to es- 4079
tablish places for the reduction of minerals." For instance, in order to economically and profitably treat these minerals it requires two ores to do it, one of which must be procured from one line and the other from another, because it all depends on the chemical composition of the ores. "Why," they say, "we guess we will wait a while."

Q. Where do those ores come from?

A. Well, the particular ores that I have in mind come from the Northern Pacific and the Burlington, and they are also found in the Great Northern territory.

Q. They had been coming together before, had they? 4080

A. In a very small way, and we haven't been able to bring them together yet, for the reason I stated, in a large way.

Q. Do you wish to be understood as claiming or stating that the manufacturing towns and manufacturers on the Burlington system rely for their raw materials on traffic relations with the Great Northern and Northern Pacific, or your traffic relations with them?

A. I did not say so. I said I thought that the business would be very greatly extended.

Q. What that would be or might be.

A. That barriers would be broken down and that the ease 4081
with which business can be done will promote more business.

Q. You have always brought raw materials to the manufacturers on your line from other connecting lines, have you not?

A. Yes, sir.

Q. They have been well supplied, have they not?

A. Fairly well, yes.

Q. The company is developed?

4082 A. Yes, sir.

Q. The Burlington system has been pretty well managed in the past?

A. Well, I hope so.

Q. In order to continue the general prosperity or to advance the general prosperity of these manufacturers in the towns on the Burlington system, was it necessary or needful that the Burlington system should be owned by the Great Northern and Northern Pacific?

A. I think that was the very best disposition that could
4083 have been made of the property for the interests of the merchants and the manufacturers and the industrial population and the agricultural population along the Burlington road; I think it gives them additional resources, aids in the development of latent resources, and represses none.

Q. But you are unable to state any circumstance or fact that has yet occurred that has contributed to their prosperity?

A. I have endeavored to state that there were cases where the conditions now under consideration——

Q. I am speaking of facts that have occurred, not what you
4084 hope may come in the future.

A. Well, may I ask if you will kindly restate your——

Mr. Day. The stenographer will read it to Mr. Harris.

The following question was read by the stenographer: "But you are unable to state any circumstance or fact that has yet occurred that has contributed to their prosperity?"

Witness. That is, a fact as to what?

Q. That has added or that has resulted in substantial advantage, material advantage, to the manufacturing towns in the territory in Nebraska that you are speaking of, these manufacturing places.

4085 A. In think in a general way—I can't put my finger on the exact amount or quantity of traffic, but I think commercial transactions have undoubtedly occurred that would not have taken place. I think the people who are trading and manufacturing are looking up the territory and are doing the business. I can't put my finger right on it and say, "There is so many dolars, or so many pounds or so many tons of anything."

Q. All these avenues were open to them before?

A. Well, as I said before, there is a difference between an 4086
avenue being opened and having permission, and having an interest in bringing something about.

Q. Well, you say there have been no instructions from the board of directors or from the management whereby you as president of the Burlington Railway changed the policy of the Burlington Railway Company?

A. They didn't have to instruct me. It is an obvious fact that where a community of interest of that kind exists everybody will be disposed to aid it to the very greatest extent.

Q. That a man will use his property to make out the most 4087
of it?

A. He naturally will; he naturally looks after his own.

Q. And the Northern Securities Company will manage the Great Northern and the Northern Pacific, which are its property, so as to make the most for the Northern Securities Company, following that line of argument?

A. Well, I couldn't testify to that. We have had no directions from the Northern Securities Company yet.

RE-DIRECT EXAMINATION.

4088

By Mr. Young:

Q. I think you stated you have been president of the Chicago, Burlington & Quincy Railway Company for how long?

A. Well, I don't remember now. It is about——

Q. Two or three years, I believe?

A. A couple of years, somewhere along there, more or less; it is a short time.

Q. Immediately before that time what position did you hold in the Chicago, Burlington & Quincy Company, and what particular branch of the business of the road was in your charge? 4089

A. I was vice-president; I was second vice-president of the Chicago, Burlington & Quincy Railroad, having general charge of the traffic, operation and maintenance of the existing properties and construction of such new lines as were undertaken. General charge of all the lines and property of the company in respect to traffic, operation, construction and maintenance.

4090 Q. For how many years were you vice-president?

A. Well, I left here, I should say about ten years ago; previous to that time I was president of the Burlington & Northern here in St. Paul.

Q. You say you were president of the Chicago, Burlington & Northern Railway Company?

A. Yes.

Q. That is a part of the Chicago, Burlington & Quincy system, is it not?

A. It is now.

4091 Q. And that is a road extending from Minneapolis and St. Paul down the Mississippi river and connecting with your lines, to St. Louis and Chicago?

A. Connecting with the old C., B. & Q.

Q. That is the line over which your coal would naturally come if brought by the "Q" from Illinois?

A. Yes.

Q. And that is the line over which your iron ore, or anything else which came from Northern Minnesota or came through St. Paul, would go on the "Q" line?

A. Naturally.

4092 Q. What special advantage has this Mississippi river line of yours for carrying great volumes of traffic at especially low rates?

A. Well, it is a low grade line; it has no grade in either direction for some 300 miles in excess of about 16 feet to the mile; and it is light in curvature, having no curve (except in one place) in excess of three degrees. And it is a line, by the way, that we can produce a line from here to St. Louis at a very moderate expense; and that is one of the things now under way, on the same basis. That is to say, not to exceed 16 feet to the mile in either direction in grade and consider-

4093 ably under three degrees in curvature,—one and a half probably, or one.

Q. You say "Produce a line to St. Louis." Do you mean to put existing lines to St. Louis in that condition?

A. By economical and slight changes in existing lines; we readjust it. I should have said readjust it, instead of produced, because we already have the line.

Q. How long trainload can you haul with a single locomotive on this Mississippi river line that you have spoken of? 4094

A. I think we can hitch up to haul regularly, day in and day out, in the vicinity of 3,000 tons to the train, of the right kind of freight; heavy freight, coal, ore, pig iron or similar articles.

Q. You were asked whether the factories and mills on the Burlington road had been supplied with their raw material, prior to the purchase of the Burlington stock, by these other companies. I will ask you whether you ever carried them any iron ore from Lake Superior. 4095

A. I don't think we ever did. I don't think we ever had any iron ore. I don't think we ever transported but one lot, and that was taken as a sample lot some years ago. I may be wrong about that, but that is the only recollection I have of any ore over the line.

Q. You were inquired of by plaintiff's counsel less with reference to Washington lumber (as I understood it) than Oregon lumber, and as to whether (I think it was) the Oregon Short Line would bring it to some other point. Whereabouts in Oregon are the lumber forests situated?

A. Well, about that I would say, and I would like with the permission of Mr. Day now to say that in speaking of that lumber I spoke of all the lumber west of the Cascade Range, the Pacific slope lumber. I had in mind no particular mill or no particular forest and I supposed that was the scope of the inquiry. 4096

Mr. Day. I so understood you.

Witness. I meant that western lumber.

Mr. Day. The witness had used the words "Washington and Oregon lumber" and I used that to draw his attention to that route, the Oregon route, the Short Line route. I understood him precisely as he has testified. 4097

Q. Mr. Harris, whereabouts in Oregon is that lumber situated so far as you know,—the standing timber, in any quantity; in what part of the state?

A. Well, I would rather refer you to Mr. Weyerhaeuser as to that. I know in a general way about that lumber, about the quality and character and the extent of the supply; but

when you come down to details, I have only been there two or three times and I would rather not attempt to testify.

Q. Do you know whether there is any lumber in the central or southern part of Oregon (any standing timber or merchantable timber for lumber)?

A. Well, I should certainly say not. I don't know of any.

Q. You have been over that country?

A. I have been over the Short Line, and I guess I have been over all the lines of railroad.

Q. Well, is there any merchantable lumber on the Short Line?

A. I don't remember any; I don't remember seeing any.

RE-CROSS EXAMINATION.

By Mr. Day:

Q. When did you cease to act as president of the Burlington & Northern?

A. I don't remember the date. It was the time the Burlington & Quincy bought it, I think. I won't be certain that my connection with the corporation ceased at that time.

Q. About when was that, Mr. Harris?

A. Well, I think that I left here about twelve years ago, and that was at the time when the Burlington & Quincy took possession of the C., B. & N. I was, by the way, president of the Burlington & Northern Corporation, and I may be now for all I know. My reply, Mr. Day, I would like to explain, meant that what I had in mind was the date when the change took place, when I ceased to be an active officer of the Burlington & Northern Company as an active corporation and became an active officer of the Burlington & Quincy.

Q. You are, as far as you know, yet president of that?

A. Well, I may be.

Q. Now, when you became vice-president of the Chicago, Burlington & Quincy system, you were the traffic manager, you had charge of the traffic of the entire system; that was a part of your jurisdiction?

A. My title was not that of traffic manager; I was vice-president and was in general charge of operation, traffic and maintenance.

Q. The Burlington & Northern from that time until now 4102
continued to be a part of the Burlington system?

A. Yes; it was practically a part, and the exact corporate change I wouldn't want to—I suppose what you meant——

Q. I am asking for the substance of things.

A. Yes; I didn't want to mislead you at all.

Q. You stated to Judge Young that that was the route by which you brought the coal from the Illinois fields to Minneapolis and St. Paul. What, roughly speaking, was the volume of that sort of traffic?

A. Well, at times it was pretty heavy, and at times it was 4103
pretty light; depending on the volition of the consumers up here, and that was one of the things that leads me to think that with a continuing interest to bring it there we will be able to handle that large tonnage.

Q. The tonnage was larger at certain seasons than others?

A. Yes; and it was lighter at times because the dealers said or the roads said—the Northern Pacific said, "We will burn some coal we have got up here at the head of the lakes," or "Buy coal from somebody else." Or the Great Northern said so, or the dealers bought from somewhere else.

Q. Well, during the season or the times when coal was mov- 4104
ing in large volume, about how many carloads a day did you bring into St. Paul?

A. I can't tell you now, Mr. Day.

Q. Many?

A. Oh, I remember in a general way that for a while our coal tonnage was heavy, but there have been so many figures that they have completely disappeared from my mind.

Q. Was any considerable portion of it destined for points on the Northern Pacific and Great Northern in the State of Minnesota?

A. I remember at one time we brought a very considerable 4105
quantity of coal for one, and perhaps both, of those companies.

Q. Well, Mr. Harris, I want to ask you, in view of your knowledge of the situation, if coal brought by the Chicago, Burlington & Northern destined for points in Minnesota on the Great Northern and Northern Pacific roads was broken bulk here?

4106 A. A great deal of it was.

Q. What were the facilities, how was it done?

A. Well, that was not done by us, and therefore I can't describe it in detail. The coal was transferred by the dealers and we required them to do it because we wouldn't let the cars go through.

Q. The dealers, where the coal was billed through from your road to points in Minnesota, unloaded it here?

A. Coal was very largely handled by the dealers; the local dealers north of here as a rule bought their coal of dealers
4107 located in St. Paul and Minneapolis.

Q. I am speaking now of the coal that was billed through from points in Illinois to points in Minnesota beyond St. Paul and Minneapolis.

A. Yes; that is the same coal. At times that coal was transferred.

Q. How was it transferred?

A. Transferred by the dealers.

Q. What were the methods, what were the facilities?

A. Well, I suppose they had transfer tracks and shoveled it out.

4108 Q. Isn't it a fact that where coal was transferred, destined for points in Minnesota, that those were exceptable instances?

A. I can't say about that, Mr. Day. It is very difficult to testify definitely about those things that happened so long ago. There was a good deal of it that was transferred and there was a good deal that went through, but I can't tell you the exact quantity. I can't give you a correct idea about it because I haven't got it myself.

GEO. B. HARRIS.

4109 Subscribed and sworn to before the undersigned, this 23rd day of October, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

The following is the testimony of C. S. Mellen taken from 4110
the record in the suit of the United States vs. Northern Securities Co. et al., as the same appears in Vol. 3 of the printed record at page 860 et seq., and introduced by defendants herein as original evidence in this case:

CHARLES S. MELLEN, called as a witness on behalf of the defendants, being duly sworn by the Examiner, testified as follows:

Examined by Mr. Bunn:

Q. Mr. Mellen, you are the president of the Northern Pacific 4111
Railway Company?

A. I am.

Q. You have already given testimony in this case?

A. In the Power case.

Q. Well, it has been introduced in this case by consent. Are you a member of the board of directors of the Northern Pacific Railway Company?

A. I am.

Q. How long have you been its president and a member of the board? 4112

A. Since sometime in August, 1897.

Q. Are you, as a director, also a member of the executive committee?

A. I am.

Q. Are you in the habit of attending the meetings of those boards?

A. Yes.

Q. Are you familiar with the corporate proceedings of the company since you became its president?

A. I am.

Q. Has the Northern Pacific Railway Company ever taken 4113
any action or any part as a corporation in the formation of the Northern Securities Company?

A. It has not.

Q. Has it taken any action or part as a corporation in the transfer of any shares of stock to the Northern Securities Company?

A. Not to my knowledge.

4114 Q. I refer to shares either of Northern Pacific stock or Great Northern stock.

A. I think not; not to my knowledge, certainly.

Q. Prior to your connection with the Northern Pacific Company, Mr. Mellen, were you at one time connected with the Union Pacific Company?

A. I was, for four years.

Q. For four years?

A. Yes, sir.

Q. During what years?

4115 A. From June 1, 1888, to the first of April, 1892.

Q. And during that time were you over the Union Pacific lines frequently?

A. Yes.

Q. What was the nature of your duties for the Union Pacific road?

A, Well, I held several positions during the four years. I was assistant general manager, acting general manager, purchasing agent, and for the greater portion of the time the general traffic manager.

Q. And your headquarters were where?

4116 A. In Omaha, Nebraska.

Q. Are you familiar, and have you been familiar during these years, with the Burlington lines, Northern Pacific lines, Great Northern lines and Union Pacific lines?

A. I am, and have been for ten years back.

Q. Mr. Mellen, did the acquisition of the stock of the Burlington road by the Northern Pacific and the Great Northern have any effect or influence to restrain or hinder trade or commerce between the states or with foreign nations?

A. I have thought it promoted it rather than hindered it.

Q. Will you tell us in what respect it promoted it?

4117 A. It resulted in a much freer interchange of business between the Northern Pacific and the Burlington. The business increased very much. It has been more to the interest of the two companies to work closely together. It has opened a much wider market to the products tributary to the line of the Northern Pacific and the business has increased. I have no figures to show, but it is my impression the business has increased very considerably, and is bound to increase from

month to month and from year to year as the result of the 4118
acquisition.

Q. What are the products which are tributary to the Northern Pacific lines and which are shipped from that line to the country reached by the Burlington?

A. The largest product is lumber.

Q. Mineral products, and live stock also?

A. Very considerable live stock interchanged, and second to lumber in importance is the mineral products.

Q. What has been the effect on the passenger business?

A. It has very greatly increased. While we had a short 4119
time ago connection with our regular transcontinental train at Billings, it was uncertain owing to the fact that trains are frequently off time, as long distance trains generally are. We now have a solid train from Kansas City and St. Louis through to the coast, and it is one of the profitable trains that we run.

Q. How many trains did you run to the coast before the Burlington shares were purchased?

A. My impression is that we ran, during the summer months, two; but the rest of the year but one.

Q. Summer two, and winter one. How many have you run 4120
since?

A. We are running two through from St. Paul to the coast and one from St. Louis and Kansas City by way of the Burlington, making three trains west of Billings.

Q. Has this third train taken its business away from the other two trains, or is it an addition of business?

A. The old trains (so to speak) are paying in excess of what they were when they were the only trains, and the Billings train is paying equal to any of the others.

Q. You are familiar, Mr. Mellen, with the Burlington lines and the general nature of the country reached by them? 4121

A. I am.

Q. What, in your judgment, will be the future of that interchange of business between these roads by the Billings route?

A. I believe it is going to assume very large proportions. I question whether or no the business of the Northern Pacific, the interchange at Billings, will not be larger than the interchange at St. Paul, within a few years.

4122 Q. Now, Mr. Mellen, is that increase of business which has occurred up to the present time, and future increase which you hope for,—do you refer in that respect to business at present existing and diverted from other lines, or to new business created?

A. I think it is new business created, so far as the Northern Pacific is concerned. I suppose if the towns upon the Burlington line did not secure their lumber from the line of the Northern Pacific they would not go without lumber, they would get it in some direction; but the result of the acquisi-
4123 tion of the Burlington road by the Northern Pacific and Great Northern has been to make a market for the lumber of the Northwest country. Where the lumber would have come from, if the Northwest country supply was shut off, I can't say. I regard the lumber business that we interchange with the Burlington road as business made by the connection at Billings.

Q. Mr. Mellen, why does this existing arrangement between these roads tend to create or promote business beyond what a mere connection and joint tariff would have done?

A. It is among the possibilities that a joint tariff and inter-
4124 change under the same might produce a large business, similar to that perhaps that we are doing now, but it is uncertain and insecure and people who are establishing large industries and seeking a market want to be sure of a secure one, that it may not be subject to the whims of management, that might possibly see in another part of the country a chance to get a few cents more on a carload of freight and divert the lumber business now coming from the State of Washington say to Texas or some other point where a supply could be obtained under a division of rates with the Burlington road. That might make it equally as well for the Burlington road,
4125 but at the same time would cause the Northern Pacific a great loss.

CROSS-EXAMINATION.

By Mr. Day:

Q. You say the companies are closer together. What do you mean by that? What have they done?

A. I mean to say there is a very much larger business interchanged between the companies.

Q. What have the companies done? 4126

A. The companies are in exactly the same position they were before.

Q. You said it brought the companies closer together.

A. Well, I meant that it promoted the interchange of business between the two companies.

Q. What has actually transpired, what has been done, what physical changes have been made by reason of the joint ownership of the Burlington?

A. There has been through service as far as the passenger business is concerned; there has been a freer interchange of business; I think there has been a larger business interchanged. I think we have been perhaps less desirous of securing the longest haul upon our traffic, and the Burlington perhaps has been desirous of promoting business with us in preference to shorter hauls in other directions. 4127

Q. Have there been any directions from the Northern Pacific and the Great Northern to the officers of the Burlington?

A. There is no authority on the part of the officers of the Northern Pacific over any officer of the Burlington. The Northern Pacific is simply a stockholder of the Burlington, and any influence that it has it can only exercise at a stockholders' meeting. 4128

Q. Has any instruction gone to anybody as officers of the Burlington as to what they should do in the way of withdrawing competition for traffic by the way of St. Paul or some other point?

A. I know of no one who could give any instructions to the Burlington except its board of directors.

Q. Then, what thing has been done to change the previous conditions or the previous methods of doing business except that you have put on a through passenger train from Kansas City? 4129

A. We have done a larger business.

Q. I ask you what thing has been done that changed the conditions that existed before the purchase?

A. The Northern Pacific has become a stockholder, and the officers of the Northern Pacific would naturally feel freer to interchange business and promote business with a line it was interested in than a line with which it had no interest.

4130 Q. You can't name a thing that has been done beyond the acquisition of ownership?

A. Beyond ownership, practically nothing.

Q. You spoke of a market being created that did not exist before. How was it created?

A. Why, the interchange of business was made easier; tariffs were made that would permit the business to be interchanged.

Q. What tariff, and when was the tariff made?

A. Well, I can't call to mind any specific tariffs. I don't
4131 personally handle that branch of the business. I know tariffs have been made.

Q. But you are generalizing, and I ask you now for the details,—what it was that was done that makes the difference?

A. Well, there have been tariffs on lumber made; rates have been reduced on lumber.

Q. When?

A. I can't give you specific instances. I will bring you tariffs, if you desire.

Q. No, but you pretend to know and I ask you now for the data, the particular facts that occurred upon which you rest
4132 this opinion you are giving here?

A. I have before me from day to day various matters that affect the interchange of business between the Burlington and the Northern Pacific road. I don't specifically charge my mind with any particular tariff, but such tariffs have been made and such business has been interchanged, and the business has been greater than it was before.

Q. Oh, I have *no* doubt the business has been greater. Prosperity has been greater?

A. Yes.

4133 CHARLES S. MELLEN.

Subscribed and sworn to before the undersigned this 27th day of October, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

The following is the testimony of E. N. Saunders taken 4134
from the record in the suit of the United States vs. Northern Securities Co. et al. as the same appears in Vol. 3 of the printed record at page 886 et seq. and introduced here by defendants as original evidence in this case.

E. N. SAUNDERS, called as a witness on behalf of the defendants, being duly sworn by the Examiner, testified as follows:

Examined by Mr. Young:

Q. Where do you reside, Mr. Saunders? 4135

A. St. Paul, Minnesota.

Q. What is your business?

A. A miner and distributer of coal.

Q. You are president of the Northwestern Fuel Co.?

A. Yes, sir.

Q. You have principal charge of the business of that company?

A. Yes, sir.

Q. Through what territory does that company distribute coal?

4136

A. Principally in Minnesota, North and South Dakota and Nebraska, and we also distribute in Iowa, Northern Illinois and Wisconsin.

Q. In what places do you have yards for wholesale distributing points?

A. The principal distributing places are at Duluth and West Superior and Washburn (Wisconsin), on Lake Superior, and at Green Bay and Milwaukee on Lake Michigan, and Chicago, as a rail distributing point.

Q. How extensive in tonnage is the business of your company in bituminous coal?

4137

A. The Northwestern Fuel Company's distributing tonnage of bituminous coal is about two million tons annually.

Q. What other concerns are you interested in, or do you have the management of, which are engaged in mining or distributing coal?

A. I am interested in the production of coal in Northern Illinois (a company called the Spring Valley Coal Company),

4138 and in a bituminous mining company in Green county, Indiana, and in a bituminous coal mining company in eastern Ohio, and a coal mining company in West Virginia.

Q. How extensive are the mining properties of the Spring Valley Mining Company in Illinois?

A. Their capacity is about five thousand tons daily production.

Q. About how large a field have you?

A. 32,000 acres of Illinois coal, with an average producing capacity of 5,000 tons to the acre; probably a total of undug
4139 coal in the ground of 180 million to 200 millions of tons at that property.

Q. Your present production or output, you say, is about 5,000 tons a day?

A. Yes, sir.

Q. Where is that shipped to, principally?

A. Wisconsin, Iowa, Minnesota, Nebraska and the two Dakotas.

Q. Are you familiar with the mining production of bituminous coal in West Virginia, Pennsylvania and Ohio?

A. Yes, sir, quite familiar.

4140 Q. To what extent have your own business operations informed you in regard to the mining business in those states?

A. I have had experience and acquaintanceship with the operation of mines in Ohio and Pennsylvania extending over a period of 25 years. In West Virginia I have been familiar with the operations for a period of about five years. All of that time I have been closely identified with distributing the products of these various mining interests that I have been interested in.

Q. From what source has been derived the greater part of the bituminous coal which you have distributed in Minne-
4141 sota along points on the Northern Pacific or Great Northern lines?

A. From Pennsylvania and Ohio, up to within a very short period. The last five years a considerable quantity has been secured from Virginia. All of which originating from those three states has been brought by rail and lake to these various distributing points for distribution in this northwestern

section. Latterly there has been a large and growing dis- 4142
tribution of coal from western fields, especially from Illinois.

Q. State whether or not in recent years you have had difficulty in obtaining such supplies as you require of bituminous coal from the eastern coal fields?

A. In the past two years it has been practically impossible to get anything like an adequate supply from those eastern fields by the original channels, and the country, as a result, has been forced to look to the nearby coal fields for its supply.

Q. What is the cause of that diminution of supply? 4143

A. Inability of the carrying companies engaged in hauling coal from western Pennsylvania, Virginia and Ohio mining districts to move it to Lake Erie ports in adequate quantities. The requirements for transportation on those railroads for supplying their nearby market have been so great that they have been absolutely unable to furnish the motive power or cars to move the supply of coal during the short period or season of navigation during which it can be moved.

Q. That is, you mean to move it in sufficient quantities?

A. In quantities sufficient to supply the demands of the people depending on the lake distributing points for fuel. 4144

Q. State whether or not the insufficiency of their terminals on those eastern roads is a factor in this diminution of their capacity, or don't you know as to that?

A. Well, I should judge that it was owing to insufficient terminals, insufficient railroad tracks, insufficient power and insufficient cars; general incapacity.

Q. Does that state of things still continue?

A. It has been very much aggravated during the past six months, and to such an extent that we are at this time, the last of October, absolutely unable to accept orders for a car of coal from any one. We have no prospect of securing be- 4145
tween now and the close of navigation on the lakes any adequate supply for the territory that is dependent on us.

Q. You are speaking of bituminous coal?

A. Bituminous coal.

Q. State whether, in your judgment, the supply of bituminous coal from the eastern mines is liable to continue to be insufficient to supply the territory through which you dis-

4146 tribute coal, especially on the lines of the Great Northern and the Northern Pacific Railway.

A. I should think it is. And I base that opinion on the failure of pledges and promises on the part of the managers of roads engaged in moving this coal to the lakes. The demand is constantly increasing; and, while they have increased their facilities to an enormous extent, they have not any more than kept up with what might be termed their local requirements. So that we are in the situation of foreigners, so to speak. They take care of the people near home, and
4147 when they have done that they have exhausted their resources.

Q. State whether or not the demand for bituminous coal in this western country, including the territory on the Northern Pacific and Great Northern, has been increasing, and at what rate,—speaking generally?

A. The demand has gradually increased ever since I have been engaged in the business, some 28 years; and for the last five or six years the consumption has increased at least 25 per cent a year. In fact, it has outrun all of our calculations and expectations, and it is evident that this whole northwest-
4148 ern country is up against a very grave problem as to getting an adequate supply of fuel to allow them to go on settling up the country as they have been, and increasing their manufacturing industries, which require fuel, as the foundation stone, unless new and very extensive bases of supply and facilities for moving the fuel can be secured.

Q. What base of supply is there that is adequate?

A. There is only one nearby base, and that is in the State of Illinois. Indiana can be called upon to some extent, although it is almost impossible to get Indiana coal past Chicago. The production there is too limited to even supply
4149 Chicago adequately. But there is almost an unlimited supply in Illinois, and a very large development has already taken place in that state.

Q. Are these Illinois coal fields that you speak of anywhere near the line of the Burlington road?

A. There are very large tracts of the Illinois fields tributary to the Burlington road, and also very large tracts that

are directly local to the Burlington road or its close-by con- 4150
nection.

Q. When you say directly local to the Burlington, do you mean that are not reached by other roads?

A. Yes, sir; that are wholly located on the Burlington; large mine developments.

Q. How is it with your own mines at Spring Valley with reference to the Burlington road?

A. Well, they are right on the Burlington road, although we do not market all of our coal on the Burlington. But we have free access and free shipping facilities on the Burling- 4151
ton.

Q. Are you familiar with the general practice in reference to the trans-shipment of coal over several connecting lines from Illinois points up here and to points beyond?

A. Quite familiar.

Q. Heretofore, prior to the year 1901, how has it been with Illinois coal shipped from the mines in that state destined to points beyond St. Paul and Minneapolis?

A. It has been almost impossible to get it through on account of the fact that the C., B. & Q. and other roads who could haul it to those points have always been unwilling, and 4152
in fact have refused to allow their equipment to go through to the destination of the coal, which necessitated transferring it here into the cars of the lines reaching north, to the great injury of the coal and great delay in transit, and with great addition to the cost.

Mr. Grover. What makes the additional cost?

Witness. The labor of transferring and the delays incident to transferring.

Q. State what effect that has upon the coal itself, and whether that effect is greater on Illinois coal than on Eastern coal? 4153

A. It is damaging to all grades of bituminous coal, and especially to Illinois coal, in that it breaks it up and produces a large amount of screenings and waste, to the great detriment of the purchaser.

Q. What advantage would it be in the transportation and distribution of coal if the cars could go directly from the

4154 mines in Illinois to points of destination on the Great Northern and Northern Pacific roads without breaking bulk?

A. It would make the Illinois fields directly available to the users of coal on the lines of the Great Northern and Northern Pacific, giving the consumers the advantage of that great deposit, with a certainty of their being able to secure their coal supply cheaply and promptly.

Q. Is this Illinois coal of such character that a consumer can put in a large stock of it?

A. It is coal that is not advantageously stocked, as it con-
4155 tains rather more sulphur, is more friable and disintegrates more rapidly than higher classes of coals. But it has an evaporating power which is adequate for all purposes, in comparison with Eastern coal, if used fresh-mined and after being shipped directly from the mines.

Q. About how far west on the lines of the Great Northern and Northern Pacific do your operations extend?

A. Well, in bituminous coal to the borders of the State of Montana, the western limits of the Dakotas and Nebraska.

Q. Assuming, Mr. Saunders, that this coal can come from the Illinois coal mines up here on the Burlington road and
4156 then go out over the Great Northern and Northern Pacific without breaking bulk, on the through tariff (likely to be permanent), what advantage would the consumers of that coal at the points of destination on these two northern roads gain over and above what they would have if it went in the way it has been going, breaking bulk at St. Paul, and depending on a joint tariff between different roads?

A. In the first place, they would have an assured regular base of supply for a splendid quality of fuel, which they could depend upon; and, in my judgment, it would result in a reduction of the average cost to the consumers of fuel in that terri-
4157 tory of 25 per cent.

Q. And this in addition to the advantages of a certain supply?

A. Yes, sir. I meant to convey the idea that it is my opinion that the people in the territory served would secure a saving of 25 per cent in their necessary disbursements for fuel as compared with what they would have if the base of supply was not made available to them. In other words, this opens

to the people of a large territory one of the most aggressively competitive fields of coal in the United States, from which heretofore they have been practically cut off. 4158

Q. What, in your judgment, would be the effect of this upon the traffic in coal and the development of the country along these two northern lines and the manufacturing and other business that may be located there?

A. It would greatly encourage the location of manufacturing interests in that territory and make it possible for them to operate successfully, as well as largely enhance the traffic in coal.

Q. State whether or not since the purchase of the Burlington shares by the Great Northern and Northern Pacific there has been any change as to coal cars going through from the Burlington road to points on the Great Northern and Northern Pacific as to transferring coal from one car to another? 4159

A. There has. We are now allowed to load cars in Illinois and send them to their destination, wherever the buyer lives, on the line of either of those roads, without changing the coal from one car to another, with the result that we are already building up a very extensive trade in that class of coal.

E. N. SAUNDERS. 4160

Subscribed and sworn to before the undersigned this 25th day of October, 1902.

FREDERICK G. INGERSOLL,
Special Examiner.

The following is the testimony of William P. Clough taken on behalf of the defendants at the hearing in New York City, January 16, 1903.

4161

WILLIAM P. CLOUGH, recalled as a witness on behalf of the defendants, testified:

By Mr. Grover:

Q. You have stated, I believe, that you are one of the vice-presidents of the Northern Securities Company?

A. Yes, sir.

4162 Q. And its general counsel?

A. Yes, sir.

Q. Where is the place of business of the Northern Securities Co.?

A. The principal office of the Northern Securities Company is in Hoboken, in the State of New Jersey; it also has an office in the City of New York.

Q. Has the Northern Securities Company transacted any business in the State of Minnesota?

A. No, sir.

4163 Q. Has it purchased or acquired any property in the State of Minnesota?

A. No, sir.

Q. At what place has it purchased and at what place have stocks which it has purchased been transferred and delivered to it?

A. Entirely in the City of New York.

Q. Has it purchased any shares of stock in either the Great Northern or Northern Pacific Railway Companies in the State of Minnesota?

A. No, sir.

4164

CROSS-EXAMINATION.

By Mr. Munn:

Q. Have any stockholders residing in the State of Minnesota sent their stock to the office of the Northern Securities Company in the City of New York? Stockholders of the Great Northern Railway Company, I mean.

A. Who are residents of the State of Minnesota?

Q. Yes.

A. A number have delivered their stock in the State of
4165 New York who are residents of the State of Minnesota.

Q. The stock books of the Great Northern Railway Company—its stock book and stock register—are kept by it in the State of Minnesota, are they not?

A. No, sir, never have been.

Q. Does it have any stock books or stock records there?

A. Never have been; they have always been kept in the City of New York, from the beginning.

Q. You are aware, of course, Mr. Clough, that under the 4166
statutes of the State of Minnesota it is obliged to keep its stock book there and stock records, is it not?

A. The Great Northern Railway Company acts under a special charter which permits it to transact all of its business in any state or foreign country; and in my opinion its charter has always permitted it to do its transfer business as it has done entirely in the City of New York.

Q. It holds its annual meetings in the City of St. Paul, Minnesota, does it not?

A. Some of them have been held in the State of Minne- 4167
sota, but its charter also authorizes it to hold its annual meetings in any state or country, and now its meetings are held in the City of New York, under its by-laws.

Q. At what place did the annual meeting which was held in October, 1902, take place?

A. In the City of New York, in pursuance of the by-laws.

Q. Did the Northern Securities Company vote the stock it holds or owns of the Great Northern Railway Company at that annual meeting in the City of New York?

A. The stock standing in the name of the Northern Securi- 4168
ties Company was not voted at that meeting.

Q. Did the stock standing in the name of these individuals who held the Great Northern stock in trust for the benefit of the Northern Securities Company vote at that meeting?

A. They did.

Q. And that stock was a majority of the stock voted at that meeting, was it not?

A. Yes, sir.

Q. At whose request was that stock voted?

A. The proxies were made by the persons in whose names the stock stood, and one of the proxies, Mr. E. T. Nichols, at- 4169
tended the meeting and cast the votes in pursuance of those proxies made in that way.

Q. Was that done at the request of the Northern Securities Company?

A. I don't know, sir; I don't think there was any request from the Northern Securities Company.

Q. It was in its behalf, was it not?

A. I think not; I think without request of the Securities

4170 Company the holders of the stock made proxies in the usual form to Mr. Nichols and others. I am sure the Securities Company never acted in that matter at all.

Q. The Mr. Nichols and the other gentleman you refer to were the proxy committee, so-called, selected by the Northern Securities Company to vote its Great Northern stock at the annual meeting?

A. They were not a committee, as I stated in my previous testimony. Proxies were made by stockholders to Mr. E. T. Nichols and James N. Hill and Edward Sawyer, or whichever
4171 of them should attend the meeting. Mr. Nichols attended the meeting.

Mr. Munn. Of course we are wasting a lot of time on that; it is already stipulated in the record. I think it was stipulated at the other hearing here that this proxy committee voted that stock.

Mr. Grover. Yes, it appears in the testimony of Mr. Nichols.

By Mr. Douglas:

Q. Mr. Nichols is an officer of the Great Northern Railway
4172 Company?

A. Yes, sir. This all appears in full, you have all the details.

Q. What office does he hold in the Great Northern Railway Company?

A. He is third vice-president.

Q. What office does he hold, if any, in the Northern Securities Company?

A. He is treasurer and secretary.

Q. What office does Mr. Edward Sawyer hold in the Great Northern Railway Company?

4173 A. Mr. Sawyer in the Great Northern Railway Company is now the treasurer and assistant secretary.

Q. What office do these other gentlemen (whose names I do not now recall) hold in the Northern Pacific and Great Northern Railway Companies?

A. James N. Hill?

Q. Yes.

A. He is vice-president.

Q. What office does he hold, if any, in the Northern Securi- 4174
ties Co.?

A. None at all.

Q. Does Mr. Sawyer hold any office in the Northern Securities Company?

A. Not the slightest.

Q. Are either of those gentlemen stockholders in the Northern Securities Company?

A. Mr. James N. Hill is a stockholder in the Northern Securities.

Q. Is Mr. Sawyer? 4175

A. I don't think he is.

Q. Is Mr. Nichols a stockholder in that company?

A. I couldn't say about that.

Mr. Munn. He has already testified he is; he has about 3,000 shares.

Witness. I had forgotten about that; I haven't looked at the transfers lately.

Q. Are any of these trustees whom you have referred to as holding stock of the Great Northern Railway Company in trust for the Northern Securities Company, employes of the Northern Securities Company? 4176

Mr. Munn. That already appears in the record, General.

A. Their names all appear, and who they are; you will find that all in full.

Q. Were they at the time of the annual meeting of the Great Northern Railway Company last fall, employes of the Northern Securities Company?

A. Some were employed there and others were not. But you have it all in the other testimony.

It is stipulated that the foregoing testimony need not be read over and signed by the witness before the Examiner. 4177 such reading and signing is duly waived.

End of Defendants' testimony.

4178

[Defendants' Exhibit A.]

NORTHERN SECURITIES COMPANY.

JAMES J. HILL—President.
JOHN S. KENNEDY—First Vice-President.
GEORGE F. BAKER—Second Vice-President.
D. WILLIS JAMES—Third Vice-President.
W. P. CLOUGH—Fourth Vice-President.
4179 E. T. NICHOLS—Secretary and Treasurer.

27-29 Pine Street, New York City,
November 22nd, 1901.

To Holders of Stock of the Great Northern Railway Company:

The Northern Securities Company, incorporated under the laws of the State of New Jersey, with an authorized capital stock of $400,000,000, and with power to invest in and hold the securities of other companies, has commenced business, and has acquired from several large holders of stock of the
4180 Great Northern Railway Company a considerable amount of that stock.

A uniform price has been paid of $180 per share, in the fully paid stock of this company, at par. This company is ready to purchase additional shares of the same stock at the same price, payable in the same manner, and will accept offers made on that basis if made within the next sixty days.

Offers for sale of stock of the Great Northern Railway Company should be made upon the enclosed form, and should be accompanied by the certificates of the stock offered with
4181 transfers duly executed, having United States stamps for transfer tax of two cents per share affixed.

Upon receipt of any such offer, so accompanied, the Northern Securities Company will deliver to the seller of the stock of the Great Northern Railway Company, certificates of its own stock to the amount of the purchase price above named, or, if such certificates are not then ready for delivery, its negotiable receipt, obliging it to issue and deliver such certifi-

cates as soon as ready. For fractional parts of shares scrip 4182
certificates convertible into stock in multiples of $100 will be given.

NORTHERN SECURITIES COMPANY,
By James J. Hill,
President.

To the Northern Securities Company, New York:

The subscriber hereby offers to sell and deliver to the Northern Securities Company ——— shares in the capital stock of the Great Northern Railway Company, represented 4183
by the certificates hereto attached, for the price of one hundred and eighty dollars ($180) per share, payable in the fully paid stock of the Northern Securities Company, at par, in accordance with the terms of the circular of the latter named company, dated November 22nd, 1901.

The stock of the Northern Securities Company to be paid in accordance with the foregoing tender should be issued as follows:

Shares. Name. Full Address.

4184

Dated ——————— —, 190—.

4185 [Defendants' Exhibit B.]

Copy.

November 30th, 1901.

Dear Sir:

Replying to your letter of the 23rd instant, asking for further information about the Northern Securities Company, I beg to say that the business of that company is to deal in high-class securities, to hold the same for the benefit of its shareholders and to do such other acts as will advance the interests of the companies whose securities it holds.

The powers of the company do not include the operation of
4186 railways, banking, nor buying or selling for others on commission.

The organization of such a company has been considered for many years by the original promoters of the St. Paul, Minneapolis and Manitoba Railway Company, and its successor, the Great Northern Railway Company, who have always remained the largest shareholders therein. These men have deemed it wise to make permanent arrangements for the protection of their interests and for securing a continuous policy in the management of their properties. Believing the North-
4187 ern Securities Company will secure the objects named, they have generally sold to it their holdings of Great Northern shares, on the terms stated in the circular.

The traffic of coal and other local companies is of great value to the railway, while the conduct of the business of such companies is outside of the railway's corporate powers. The Securities Company will control this large traffic for the railway and will receive the profits of these separate properties.

The offer contained in the circular came from the request of the large holders of Great Northern, above mentioned, who
4188 desired that all other holders might have the same opportunities as themselves in association with them, and upon the same terms. The writer is of opinion that the offer of the Securities Company is one that Great Northern shareholders can accept with profit and advantage to themselves.

Yours truly,

(Signed) JAS. J. HILL.

DEFENDANTS' EXHIBIT C. 1051

4189

DEFENDANTS EXHIBIT C.

THIRTEENTH ANNUAL REPORT

4190

OF THE

GREAT NORTHERN

4191

Railway Company.

FISCAL YEAR ENDED 4192

JUNE 30, 1902.

4138

GREAT NORTHERN RAILWAY COMPANY.

DIRECTORS.

4194

JAMES J. HILL (term expires 1902).....St. Paul.
FREDERICK WEYERHAEUSER (term expires 1902).....St. Paul.
SAMUEL HILL (term expires 1902).....Minneapolis.
R. I. FARRINGTON (term expires 1903).....St. Paul.
EDWARD SAWYER (term expires 1903).....St. Paul.
M. D. GROVER (term expires 1903).....St. Paul.
JAMES N. HILL (term expires 1904).....St. Paul.
WILLIAM B. DEAN (term expires 1904).....St. Paul.
HENRY W. CANNON (term expires 1904).....New York.

4195

OFFICERS.

J. J. HILL, President.....St. Paul.
J. N. HILL, Vice President.....St. Paul.
R. I. FARRINGTON, Second Vice President.....St. Paul.
E T. NICHOLS, Third Vice President, Secretary and Assistant Treasurer .....New York.
J. W. BLABON, Fourth Vice President.....St. Paul.
E. SAWYER, Treasurer and Assistant Secretary.....St. Paul.
N. TERHUNE, Assistant Secretary and Assistant Treas....New York.
J. G. DREW, Comptroller.....St. Paul.
M. D. GROVER, General Solicitor.....St. Paul.
J. F. STEVENS, General Manager and Chief Engineer.....St. Paul.

4196

F. E. WARD, General Superintendent.....St. Paul.
F. B. CLARKE, General Traffic Manager.....St. Paul.
E. A. BERNHOLZ, Transfer Agent.....New York.
M. H. NILES, Transfer Agent.....New York.

THIRTEENTH ANNUAL REPORT

OF THE

GREAT NORTHERN RAILWAY COMPANY.

4198

To the Stockholders:

The President and Directors submit the following report for the year ended June 30th, 1902:

FINANCIAL.

CAPITAL STOCK.

There has been no increase in the authorized share capital of the Great Northern Railway Company during the year, and same remains as $125,000,000. 4199

Of the capital authorized there had been issued to June 30th, 1901 (page 6, last year's report)	$98,711,750.00
There have been issued during the year 12½ shares, amounting to	1,250.00
in completing previous transactions.	
1,400 shares, amounting to	140,000.00
have been transferred to the Great Northern Employes' Investment Company, Limited, under the contract referred to on page 7 of Report for the year ended June 30th, 1900. To June 30th, 1902, the Investment Company had subscribed and paid for 4,200 shares ($420,000) under the contract mentioned.	4200
Carried forward	$98,853,000.00

4201	Brought forward.....	$98,853,000.00
	250,000 shares, amounting to.....	25,000,000.00
	were issued as of August 1st, 1901, in accordance with the President's circular of March 18th, 1901.	
	Total outstanding June 30th, 1902.....	$123,853,000.00

There were held in the Treasury of the Company June 30th,
4202 1902, 5,670 shares of Great Northern stock, not used in acquiring the outstanding 4,536 shares of Manitoba stock, and 5,800 shares of Great Northern stock to be issued only to the Investment Company as subscribed for.

The Report last year explained in detail the securities to be acquired. During the year the Company has acquired the $5,000,000 St. Paul, Minneapolis and Manitoba Railway Company's Improvement Bonds referred to last year, and same are held in the Company's Treasury. The adjustment of the accounts made necessary by this acquisition and mentioned in last year's Report (page 7) has been made, and is reflected
4203 in the Balance Sheet herewith, page 33.

Instead of purchasing the capital stock ($5,000,000) of the Seattle and Northern Railway Company, as originally intended, it was decided to buy the physical property of that Company, and the same was purchased as of February 1st, 1902, by the Seattle and Montana Railroad Company for the sum of $1,500,000 cash. To enable the Seattle and Montana Railroad Company to make this purchase, action was taken by its stockholders to increase its capital stock from $12,500,000 to $14,000,000, the additional $1,500,000 of stock being bought by the Great Northern Railway Company.

4204 The stocks of the other Companies mentioned on page 6 of last year's Report have not as yet been issued, pending the completion of the lines and the closing of the construction accounts, but this Company has advanced the necessary funds for construction purposes, and is carrying the amounts as advances to apply on stock subscriptions.

BONDED DEBT.

4205

There has been a net increase of $1,292,000 during the year in the bonded debt of the St. Paul, Minneapolis and Manitoba Railway Company, outstanding in the hands of the public, as will be seen by reference to table on page 32, made up as follows:

MONTANA EXTENSION MORTGAGE FOUR PER CENT BONDS issued during the year account construction of additional mileage within the State of Montana, as explained in previous reports		$2,278,000
Less the following reductions—		
CONSOLIDATED MORTGAGE 4½ PER CENT BONDS redeemed and canceled by the Trustee through the operation of the sinking fund, as per detail on pages 38 to 40.		$1,012,000
Less bonds issued—		
On account of additions and improvements...	$26,000	
In exchange for St. Paul, Minneapolis & Manitoba Railway Company's second mortgage bonds, surrendered and canceled.....	357,000	
In exchange for St. Paul, Minneapolis & Manitoba Railway Company's Dakota extension mortgage bonds, surrendered and canceled	49,000	
Total issued.....		432,000
Net reduction in consolidated mortgage 4½ per cent bonds		$580,000
SECOND MORTGAGE SIX PER CENT BONDS, canceled as above.....		357,000
DAKOTA EXTENSION MORTGAGE SIX PER CENT BONDS, canceled as above.....		49,000
Total reduction.....		$986,000
Net increase in St. Paul, Minneapolis & Manitoba Railway Company's bonded debt.....		$1,292,000

4206

4207

There has been no change during the year in the bonded debt of any of the Proprietary Companies.

4208

The amount of Northern Pacific-Great Northern, Joint C. B. & Q. collateral 4 per cent bonds outstanding June 30th, 1902, is the same as reported last year, $215,153,000 Bonds and $1,400 Scrip. The Chicago, Burlington and Quincy Railway Company has collected the dividends on the C. B. & Q. R. R. stock deposited as collateral to secure these bonds, and paid the interest on the bonds, without affecting this Company's Income Account.

4209

GENERAL.

Expenditures were made during the year on the capital accounts of Proprietary Companies for work completed or under construction, as follows:

Eastern Railway Company of Minnesota	$1,417,587.46
Montana Central Railway Company.....(Credit)	19,298.99
Willmar & Sioux Falls Railway Company	9,717.00
Duluth, Watertown & Pacific Railway Company	1,603.00
Seattle & Montana Railroad Company	2,460,552.68
4210 Duluth Terminal Railway Company	6,040.73
Park Rapids & Leech Lake Railway Company	6,781.12
Minneapolis Union Railway Company.....(Credit)	10.45
Total	$3,882,972.55

As shown on page 27, there was appropriated out of the net revenue for the year $2,000,000 for the "Fund for Permanent Improvements and Renewals"; and there was charged against that fund $1,820,225.11, the cost of improvements (other than
4211 those charged to operation) made during the year to the property leased from the St. Paul, Minneapolis and Manitoba Railway Company.

NEW LINES.

The Report last year referred at length to new lines then under construction or contemplated, of which 268.29 miles have been completed, as follows:

4212 SEATTLE & NORTHERN RY.,

Anacortes to Rockport, Wash., 54.42 miles taken over by the Seattle & Montana R. R. Co. February 1st, 1902, as explained on page 6.

DAKOTA & GREAT NORTHERN RY.,

Bottineau to Souris, N. D., 12.72 miles, opened for operation October 7th, 1901; Lakota to beyond Edmore, N. D., 27.72 miles, opened for operation July 1, 1902.

These two lines have been leased by the Great Northern 4213
Railway Company.

MONTANA & GREAT NORTHERN RY.,
Jennings to Gateway, Mont. (on the International Boundary), 50.98 miles, opened for operation July 10th, 1902.

CROW'S NEST SOUTHERN RY.,
Gateway to Morrisey Junction, B. C., 44.26 miles, with a spur from Morrisey Junction to Morrisey, B. C., 4.21 miles, opened for operation September 15th, 1902.

WASHINGTON & GREAT NORTHERN RY.,
Marcus to Boundary, Wash., 27.66 miles, and from the International Boundary to Republic, Wash., 31.92 miles, opened for operation August 17th, 1902. 4214

VANCOUVER, VICTORIA & EASTERN RY. AND NAV. CO.,
From International Boundary line at Rideau, B. C., to the boundary line near Carson, B. C., 14.40 miles, opened for operation August 17th, 1902. A spur from the main line to Grand Forks, B. C., 1.89 miles, is under construction.

These lines have been built in a thoroughly substantial and permanent manner, and have been equipped with passing tracks, yard tracks, stations, water plants and other buildings.

The work of changing from narrow to standard the gauge of the Great Falls and Canada Railway (now owned by the 4215
Montana and Great Northern Railway Company) from Great Falls to Sweet Grass, Montana, 134.37 miles, is now in progress and will be completed about December 1st, 1902.

There has been built during the year at Everett, Wash., 3.35 miles of new main track, forming part of a new connection between the tracks of the St. Paul, Minneapolis and Manitoba Railway Company near Lowell and the tracks of the Seattle and Montana Railroad Company at Everett Junction.

During the year, the Eastern Railway Company of Minnesota has purchased the line constructed by the Swan River Logging Company, Limited, from Barclay Junction to Vir- 4216
ginia, Minnesota, 18.73 miles in length, heretofore operated under contract with privilege of purchase, as mentioned on page 13 of the report for year ended June 30, 1900.

Good progress has been made during the year on the two steamships being built for the Great Northern Steamship Company at New London, Conn., and it is expected they will be launched in December.

4217

REVISION OF LINES.

References were made on pages 14 and 15 of last year's Report to the revision of lines for the purpose of reducing grades and curvature.

Of the work there mentioned, there was completed and opened for operation during the year:

4218 Between Huntley Coulee and Great Falls, Mont., 22.62 miles. The work on this line was especially heavy, and the line has been built in the most substantial and permanent manner.

Between Harrington and Moscow, Wash., 2.89 miles, and

Between Moscow and Edwall, Wash., 1.42 miles.

The opening of these new lines has decreased the main track mileage by 3.66 miles.

Work has been continued during the year on the new line from Belleville to Fairhaven, Wash. Track is now being laid on the lower end of this line, and the line is nearly completed.

4219 The length of the new line is about 18.9 miles; of the old line 20.55 miles. The maximum grades on the old line were 2.7 per cent going south and 1.2 per cent going north. On the new line the maximum grade is one-half of one per cent in each direction. The work on the new line has been both heavy and expensive.

A new line has been built between Everett and Marysville, Wash., including "Y," 1.55 miles in length, in place of 1.58 miles of old line, securing a much better crossing of the Snohomish River, over which a new drawbridge has been built. This was referred to on page 17 of last year's Report.

4220 A small change of line has been made near Nyack, Mont., for a distance of 2,670 feet.

To improve the alignment, work is now in progress on a new line between Elmira and Bonner's Ferry, Idaho, about 15.45 miles in length.

4221

LEASE OF THE EASTERN RAILWAY OF MINNESOTA.

To simplify operation and accounting the Great Northern Railway Company leased for a period of ninety-nine years from May 1st, 1902, the lines of railway and property of the Eastern Railway Company of Minnesota. While the Great Northern Railway Company has always owned the capital stock of the Eastern Railway Company, that Company's railways, elevators, etc., prior to May 1st, 1902, had been operated independently.

4222

As rental under the lease, the Great Northern Railway Company pays the interest as it matures, on the Eastern Railway Company's bonds, dividends at the rate of six per cent per annum on the capital stock of the Eastern Company and all taxes and assessments upon the property, gross earnings and income of the Eastern Company, or for which that Company or its property may be liable, levied, assessed or falling due during the term of the lease.

On account of this lease, the Gross Earnings, Operating Expenses, Taxes, Income from Operation and Miscellaneous Income Received of the Eastern Railway Company of Minnesota, as given in table on page 26, are for the ten months ended April 30th, 1902, only; the Gross Earnings, Operating Expenses, etc., of the lines leased for the months of May and June, 1902, being included in the figures of the Great Northern Railway Company as given in tables on pages 27 and 28.

4223

EQUIPMENT.

By the purchase of the Seattle and Northern Railway, the Seattle and Montana Railroad Company acquired the following equipment:

4224

1 locomotive, 1 passenger coach.
1 baggage and express car, 4 box cars.
10 flat cars and 26 logging trucks.

Same have been carefully inspected and appraised, and taken into equipment account at their appraised value.

4225 The following equipment has been sold or taken out of service during the year:

21 light Great Northern locomotives.

1 light locomotive acquired by the Willmar and Sioux Falls Railway Company in 1900, in purchase of Sioux City and Northern Railroad.

1 sleeping car and 1 poling car.

The Report for last year stated that of the equipment ordered 60 locomotives, 62 passenger cars and 2,000 freight cars had not been received and taken into account at the end of that year.

4226 During the year under review, orders were placed for 40 locomotives, 62 passenger cars, 3,300 freight cars and 5 wrecking cars with steam cranes.

Of the total new equipment undelivered at the close of last year and ordered this year, the following had been received and taken into account at the close of this year:

66 locomotives, as follows:

6 ten-wheel passenger locomotives, 19″x26″ cylinders, weighting 120,000 pounds on drivers.

10 ten-wheel passenger locomotives, 19″x28″ cylinders,
4227 weighing 134,000 pounds on drivers.

40 consolidation freight locomotives, 20″x32″ cylinders, narrow fire box, weighing 179,000 pounds on drivers.

5 consolidation freight locomotives, 20″x32″ cylinders, wide fire box, weighing 180,000 pounds on drivers.

5 compound consolidation freight locomotives, 23″ and 33″x32″ two cylinders, weighing 180,000 pounds on drivers.

4 dining cars, 70 feet long.

50 first-class passenger coaches, 60 feet 10 inches long.

2 postal cars, 60 feet 8½ inches long.

4228 6 baggage and express cars, 64 feet 9 inches long; 5 additional equipment and 1 replacing destroyed car.

1,500 forty-feet 80,000 pounds capacity box cars; 1,322 additional equipment and 178 replacing destroyed cars.

300 forty-feet 80,000 pounds capacity flat cars; 223 additional equipment and 77 replacing destroyed cars.

200 forty-feet 60,000 pounds capacity refrigerator cars; 195 additional and 5 replacing destroyed cars.

200 twenty-two feet 100,000 pounds capacity steel ore cars.

1 Lidgerwood Unloader.

All the above equipment is equipped with air brakes and automatic couplers. 4229

The remaining 34 locomotives, 62 passenger cars, 3,100 freight cars and 5 wrecking cars are now being delivered.

There were built at the Company's shops for additional equipment:

50 four-wheel caboose cars.
15 cinder cars and
6 supply cars.

Some transfers between classes and changes were made in other equipment. 4230

There was expended during the year for equipment $3,137,273.92, of which amount $2,696,389.07 was charged to "Equipment Account."

As equipment is destroyed or taken out of service, Operating Expense is charged and "Fund for Replacement of Equipment" is credited with the cost of replacing same. When equipment for replacement is purchased, the cost of same is charged to the account last mentioned.

4231

ADDITIONS AND IMPROVEMENTS.

Crossing gates have been put in at Division and Harrison Streets, N. E. Minneapolis; also at Eighth Street, Moorhead, Minn., with electric signals at Sixth, Seventh and Ninth Streets. At Crookston, Minn., a bridge has been built carrying Eighth Street over our tracks.

The work of enlarging the division terminal at Havre, Mont., referred to last year, has been completed, there having been built a new yard, 23-stall roundhouse with turntable and cinder pit, water supply, 20-pocket coaling station, sand house, machine shops with engine and boiler house and transfer tables, blacksmith and boiler shop, store house, scrap bins and lumber sheds, oil house, freight depot and track scales. The new buildings are of brick, and modern in every respect. 4232

The division yard at Everett, Wash., has also been completed—yard containing 23,100 feet of track, 15-stall brick

4233 roundhouse with turntable and cinder pit, water supply, 20-pocket coaling station, brick machine shop, carpenter shop, store house, scrap bins, etc., oil house and sand house.

The yard at Stony Brook, Minn., on the Eastern Railway, has been revised and 6,390 feet of additional track laid, 15 pockets added to the coaling station, the water supply improved and the buildings relocated.

The yards at Butte, Mont., and Rossland, B. C., have been revised and enlarged.

At Church's Ferry, N. D., the junction point of the Cando
4234 Branch, a new "Y" track has been laid, several additional yard tracks put in, buildings relocated and a new roundhouse and freight transfer platform 12′x240′ built.

A track about 14,000 feet long, with several spurs from same, has been put in at Blaine, Wash., to reach industries on the water front.

Many passing tracks between Crookston and Cass Lake, Minn., have been extended to a length of 4,000 feet. The laying of additional passing tracks 3,000 feet long and the extension of old tracks to that length have been continued during the year, and in addition many house tracks and tracks for
4235 local industries have been laid. The net increase in side track mileage during the year, including these tracks and such tracks in the new yards mentioned as were laid June 30th, 1902, but not including side tracks on new lines built or acquired during the year, is as follows:

Line leased from St. Paul, Minneapolis & Manitoba Railway Co	38.48	miles
Line leased from Eastern Ry. Co. of Minnesota	18.41	"
Line leased from Park Rapids & Leech Lake Ry. Co	.19	"
Duluth Terminal Railway	.03	"
Montana Central Railway	3.10	"
4236 Willmar & Sioux Falls Railway	1.08	"
Minneapolis Union Railway	.01	"
Seattle & Montana Railroad	10.00	"
Spokane Falls & Northern Railway System	1.89	"
Total	73.19	miles

During the year main line tracks have been relaid as follows: 4237
9.378 miles with 80-pound rail, 435.647 miles with 77½-pound rail, 2.413 miles with 75-pound rail and 3.818 miles with 60-pound rail.

The longest stretches of track relaid with 77½-pound rails were 234 miles between Williston, N. D., and Eureka, Montana; 126 miles between Concord and Columbia Falls, Montana, and 31 miles on the line between Breckenridge, Minn., and Larimore, N. D., where work is now in progress on 100 miles additional to complete the relaying of the main tracks between these points.

On new tracks built and tracks relaid tie-plates are being 4238
used as rapidly as they can be secured; the total number of plates in tracks June 30th, 1902, is approximately 6,500,000.

The permanent lining of the Wickes tunnel, on the Montana Central Railway, referred to last year, has been completed, and the track through the tunnel relaid with 77½-pound rails, the distance being included in the figures above given.

The work of building new shops at St. Paul is now in progress, the buildings under construction being:

Machine Shop, 600′x150′, containing 25 pits, 49′ long inside; a tin shop, 46′x73′.

4239

A building 452′2″x235′, containing blacksmith shop 325′ x146′; boiler shop 191′4″x183′ with 10 pits; flue shop, 76′x52′; truck shop, 76′8″x52′ and tank shop 235′ x87′4″.

Power House, 110′2″x106′6″, containing an engine room 52′6″x110′2″ and a boiler room 110′2″x54′. Boilers of 1,250 horse power are to be installed in this boiler room.

Transfer Pit, 625′ long, fitted with a 50′ transfer table.

Store House, 400′x100′, two stories. The East 40′ of the building contains the store department offices, and in 4240
the West 50 feet is located the brass foundry.

Iron House, 200′x100′, with a standard gauge track through the centre.

A two-story building, 40′x60′ containing the chemical laboratory and the office of the Shops Superintendent.

All of the buildings are of brick and of the most modern type.

A brick storehouse, 30′x90′, for materials and supplies, has been built at Larimore, N. D., and the oil house at West Superior shops extended 30 feet.

4241 An electric lighting plant has been installed at West Superior, Wis., for lighting the dock, warehouse, elevators, shops, freight house and division office building.

Dock No. 6 at West Superior, Wis., has been extended 868 feet, additional tracks put in, 600 feet of coal pockets built, and slip on east side of the dock dredged to a depth of 20 feet.

An incline with pontoon and the necessary tracks for a car ferry to New Westminster have been put in at Liverpool, B. C.

The brick passenger station at Spokane, Wash., referred to last year, has been completed. On the second and third floors
4242 are located the offices of the officials of the Western District and the General Offices of the Spokane Falls and Northern Railway System.

New depots have been built at the following stations:

Mayer, Minn.	Sharon, N. D.	Colgate, N. D.
Doran, Minn.	Perth, N. D.	Knox, N. D.
Berwick, N. D.	Kragnes, Minn.	University, N. D.
Elmer, Minn.	Priest River, Ida.	Berthold, N. D.
Portage, Mont.	Wooley, Wash.	Ephrata, Wash.
Interbay, Wash.	Buhl, Minn.	Grandy, Minn.
Brookston, Minn.	Barclay Jct., Minn.	Cohasset, Minn.
Litchfield, Minn.		

4243

Depots at sixteen other stations have been enlarged.

A brick freight house, 50′x300′ has been built at Great Falls, Montana, and one 40′x300′ is now under construction at Fargo, N. D.

A freight shed has been built at Lynd, Minn., and one at Stephen, Minn.

An extension has been made to the wool warehouse at Benton, Montana.

A grain warehouse, 60′x160′, has been built at Downs,
4244 Wash., and extensions, each 60′x160′, made to the grain warehouses at Edwall, Harrington and Lamona, Wash.

A new ice house has been built at Sioux City, Iowa, and extensions to the ice houses at Willmar, Minn., and Grand Forks, N. D.

Section houses have been built at the following stations: 4245

Swan River, Minn. (2)	Kilva, Mont. (2)	Tagus, N. D.
Tioga, N. D.	Coburg, Mont.	Harlem, Mont. (2)
Malta, Mont. (2)	Kremlin, Mont. (2)	Burnham, Mont.
Hingham, Mont. (2)	Moscow, Wash. (2)	Boulder, Mont.
Odessa, Wash. (2)	Burlington, Wash.	Everett, Wash. (2)
Interbay, Wash.	Portage, Mont.	Ferndale, Wash.
Palermo, N. D. (2)		

and an addition has been built to the section house at Saunders, Wis.

Stockyards have been built at: 4246

Grand Rapids, Minn.	Avon, Minn.	Kerkhoven, Minn.
Osakis, Minn.	Sheffield, S. D.	Zimmerman, Minn.
Graceville, Minn.	Yale, S. D.	Hazel, S. D.
Grover, S. D.	Nassau, Minn.	Lynd, Minn.
South Shore, S. D.	Pisek, N. D.	Holloway, Minn.
Cavalier, N. D.	Des Lacs, N. D.	Hannah, N. D.
Stanley, N. D.	Browning, Mont.	Havre, Mont.
Clancy, Mont.	Wooley, Wash.	Everett, Wash.
Litchfield, Minn.		

The stockyards at Brandon, Minn., Monticello, Minn., Great Falls, Mont., and Galata, Mont., have been enlarged. 4247

Scales have been placed in the stockyards at Danvers, Minn., and Minot, N. D. Improvements have been made to other stockyards.

Coaling stations equipped with lifting engines and the necessary tracks have been built at Minneapolis Junction, Minn., Smith Lake, Minn., Casselton, N. D., and East Spokane, Wash., replacing stations of an old pattern that had burned. Coaling platforms and sheds have been built at Cambridge, Minn., Silver, Mont., Northport, Wash., and Chewelah, Wash.

Permanent improvements in the water supply are being continued, numerous plants, both additional and replacing others, having been built, and improvements made on existing plants. 4248

Loading platforms have been built at eighteen stations.

4257 the Great Northern Railway Company is not carrying on its books, as an asset, the cost of any additions or improvements to the line leased from the Manitoba Company.

All replacements, renewals, etc., have been charged to Operating Expenses. The amount included in "Maintenance of Road and Structures" this year, for extraordinary improvements, etc., is $1,663,812.

The efficiency of the railway as a means of transportation is improving every year.

Attention is called to the increase in the train load of revenue freight and the resulting income per train mile.

4258

VOLUME OF TRAFFIC AND RATES.

The tonnage of revenue freight hauled during the year increased 3,311,552 tons, or 33.363 per cent; freight earnings increased $5,785,363.28, or 21.108 per cent. The number of bushels of wheat hauled East increased 26,987,682 bushels, equal to 809,630 tons. Including this increase, however, there
4259 were 4,587,599 less bushels of wheat hauled this year than during the year ended June 30th, 1900, and the earnings from East bound wheat traffic this year were $542,685.26 less than during that period.

There was an increase of 1,458,179 gross tons in the amount of iron ore hauled on the Eastern Division.

The increase in freight traffic aside from wheat and iron ore amounted to 1,070,762 tons, and in the earnings to $2,587,-894.50. This increase was in general business and over the entire System, except on the Montana Central Railway, where there was a falling off in the volume of freight traffic and
4260 earnings on account of the practical suspension of the mining and manufacturing of copper in Montana for nearly four months. On account of the rapid settlement and development of the country through which the system runs, there has been a large increase in shipments of merchandise and supplies required by the smaller towns. This is shown by the fact that while the tonnage hauled increased 33.363 per cent

as above given, the ton mileage increased but 28.547 per cent. 4261
Or, the average distance each ton was hauled last year was 250 miles, while this year it was 241 miles. This is still further reflected in the comparatively small reduction in the average revenue per ton per mile of .012 cents, or 1.3777 per cent, equal on the ton mileage hauled this year to about $383,000. That is, there has been a greater increase in the volume of the higher class freight than in the lower classes. Effective January 25th, 1902, the rates on all classes of merchandise between stations in Minnesota, North Dakota and South Dakota were reduced an average of about fifteen per cent.

It is the policy of the Company to reduce freight rates as 4262
rapidly as the volume of traffic and earnings will justify, and to this end the rates on grain, grain products, potatoes, onions and hay, from stations in the State of Washington to Puget Sound, were reduced during August, 1902, an average of ten per cent. Effective August 28th, 1902, the rates on grain and grain products from stations in Minnesota, North Dakota and South Dakota to Eastern terminals were reduced an average of about ten per cent.

While the ton mileage of revenue freight increased 28.547 per cent, the mileage of loaded freight cars increased but 4263
21.2035 per cent, and the mileage of freight hauling trains but 17.3725 per cent, resulting in an increase of 36.301 tons (9.5205 per cent), in the average number of revenue tons per freight train mile, making the average train load of revenue freight 417.595 tons.

The earnings of passenger trains increased $1,869,091.08, or 29.5468 per cent, of which $1,752,840.51 came from passenger fares, $29,272.65 from sleeping cars, $8,220.73 from transportation of mails, $63,183.61 from transportation of express, and the balance from miscellaneous sources.

Although there has been no increase in passenger rates dur- 4264
ing the year, the average revenue per passenger per mile has increased .037 cents, or 1.6157 per cent, caused by the natural increase in local travel due to the settlement of the country and to the prosperous condition of the people.

4265 The large movement of people to the Northwest during the last few years, which still continues without abatement, has resulted in the settlement of a vast area of vacant lands adjacent to the Company's line. During this period more than 5,000,000 acres of Government land in the northern part of North Dakota has been taken under the Homestead Act. It is also satisfactory to note that many of the large farms in this State are being cut up into smaller ones. The immigration into the Western and Pacific States during the past year has continued, and in numbers has exceeded that of any previous year.

4266 The Government having undertaken the reclamation of the semi-arid lands by means of irrigation, a speedy settlement of the same will follow. The farmers from the older States stand ready at the present time to buy all the lands the Government will irrigate at prices that will pay a profit on the cost of the work.

The opening of the new lines hereinbefore referred to, the excellent crop that has just been harvested, and the prosperous condition generally of the territory served by the Company, all indicate that the business of the Company for the

4267 year ending June 30th, 1903, will show a large increase over the year just ended.

The Board respectfully call attention of the shareholders to the Report of the Comptroller, with the customary balance sheet and statistical tables, and to the Report of the Land Commissioner.

JAMES J. HILL,
President.

DEFENDANTS' EXHIBIT C. 1071

4268

COMPTROLLER'S REPORT.

MR. JAMES J. HILL, President:

DEAR SIR: Herewith I beg to submit statements showing results of operation of the Great Northern Railway Company and its proprietary companies for the fiscal year ended June 30th, 1902. 4269

These statements are made in the same form and on the same basis as those submitted with last year's report.

The statements on the pages next following, 24 and 25, show the Earnings, Operating Expenses, Taxes, etc., of the Railway SYSTEM exclusive of the Spokane Falls & Northern Railway System, which is operated separately. The statement on page 26 shows the division of these amounts between the several railways, and includes as a separate item the same information for the Spokane Falls & Northern Railway System. On pages 27 and 28 are given the Revenue and Income Accounts of the Great Northern Railway COMPANY. 4270

The balance sheet on page 33, like the one published last year, presents a complete statement of the property, capitalization and finances of what is known as the Great Northern Railway Line. The finances, etc., of the Spokane Falls & Northern System and of the Northern Steamship Company are not included, those properties being operate and their finances kept separate and distinct from those of the balance of the system.

J. G. DREW,
Comptroller.

4271

GROSS EARNINGS, OPERATING EXPENSES, TAXES, AND NET EARNINGS OF THE RAILWAY SYSTEM, AND PER MILE OF ROAD OPERATED, FOR THE FISCAL YEAR ENDED JUNE 30th, 1902, COMPARED WITH THE PREVIOUS FISCAL YEAR.

NOTE: These figures do NOT include the Spokane Falls & Northern Railway System.

GROSS EARNINGS.

PER CENT.	1902.	CLASS.	1901	PER CENT.
4272 76.0680	$27,409,017.23	Freight	$21,623,653.95	76.2721
18.4895	6,662,173.25	Passenger	4,909,332.74	17.3164
2.2185	799,365.59	Mail	791,144.86	2.7906
1.0339	372,553.21	Express	309,369.60	1.0912
2.1901	789,146.78	Miscellaneous	717,188.60	2.5297
	$36,032,256.06	Total	$28,350,689.75	

4273

OPERATING EXPENSES.

PER CENT.	1902.	CLASS.	1901.	PER CENT.
50.1172	$8,915,425.12	Conducting Transportation	$7,751,339.13	48.9246
15.3255	2,726,282.76	Maintenance of Equipment	2,354,311.46	14.8599
4274 26.4345	4,702,479.41	Maintenance of Road and Structures.	4,402,157.25	27.7854
8.1228	1,444,976.95	General Expenses.	1,335,613.22	8.4301
	$17,789,164.24	Total	$15,843,421.06	

DEFENDANTS' EXHIBIT C. 1073

4275

SUMMARY OF EARNINGS AND EXPENSES.

1902.		1901.	
$36,032,256.06	Gross Earnings	$28,350,689.75	4276
17,789,164.24	Operating Expenses	15,843,421.06	
$18,243,091.82	Net Earnings	$12,507,268.69	
1,239,693.97	Taxes	969,642.31	
$17,003,397.85	Income from Operation	$11,537,626.38	
49.37	Operating Expenses, per cent of Gross Earnings	55.88	4277
52.81	Operating Expenses and Taxes, per cent of Gross Earnings	59.30	
$6,864.11	Gross Traffic Eafnings per Mile of Road	$5,449.64	
3,388.82	Operating Expenses per Mile of Road	3,045.46	
$3,475.29	Net Earnings per Mile of Road	$2,404.18	
5,249.37	Average Miles of Road under Operatiou	5,202.31	4278

STATEMENT SHOWING THE REVENUES FOR THE YEAR ENDED JUNE 30th, 1902, OF THE GREAT NORTHERN RAILWAY COMPANY AND ALL PROPRIETARY COMPANIES.

COMPANIES	GROSS EARNINGS	OPERATING EXPENSES	TAXES	INCOME FROM OPERATION	MISCELLAN'OUS INCOME RECEIVED	TOTAL
Great Northern Railway	$28,397,134.90	$14,143,761.74	$984,375.37	$13,268,997.79	$1,460,458.43	$14,729,456.22
RAILWAYS:						
Eastern Ry. of Minnesota	4,238,929.41	1,645,632.02	139,209.41	2,454,087.98	457,444.98	2,911,582.96
Montana Central Ry	1,787,051.63	1,105,435.84	47,568.67	634,047.12	62,268.41	696,315.53
Willmar & Sioux Falls Ry	1,520,292.78	858,035.87	61,874.09	600,382.82	21,279.68	621,662.50
Duluth, Watertown & Pacific Ry	88,847.34	36,298.77	6,666.43	45,882.14	172.00	46,054.14
Total Railway System Proper	$36,032,256.06	$17,789,164.24	$1,239,698.97	$17,003,397.85	$2,001,623.50	$19,005,021.35
OTHER COMPANIES:						
Spokane Falls & Northern Ry. System	1,165,197.04	582,298.88	30,443.31	552,454.85	9,336.62	561,791.47
Minneapolis Union Ry	225,997.75	53,105.29	1,053.71	171,838.75	9,706.63	181,545.38
Minneapolis Western Ry	65,082.80	35,114.69	1,555.22	28,419 89	149.21	28,569.10
Duluth Terminal Ry	36,232.52	22,732.52	.....	13,500.00	.....	13,500.00
Northern Steamship Co*	1,333,740.33	1,119,155.80	.....	214,584.53	10,934.30	225,518.83
Total for System	$38,858,513.50	$19,601,571.42	$1,272,746.21	$17,984,195.87	$2,031,750.26	$20,015,946.13

‡ For ten (10) months ended April 30th, 1902. * For year ended December 31st, 1901.

EXPLANATORY NOTES.

DIVIDENDS:—Out of the net income of the Companies named the following dividends have been declared:

Eastern Railway Company of Minnesota	$800,000.00
Willmar and Sioux Falls Railway Company	350,000.00
Spokane Falls and Northern Railway System:	
Columbia and Red Mountain Railway Co	13,220.00
Red Mountain Railway Co	9,580.00
Minneapolis Union Railway Company	25,000.00
Northern Steamship Company	150,000.00
Total	$1,347,750.00

which amount is not included in the "Miscellaneous Income" of the Great Northern Railway as given in the above table, but is added to the "Miscellaneous Income" in the Income account on page 28.

DULUTH TERMINAL RY. CO.:—This Company is the owner of the railway used by the Great Northern Railway to secure entrance into Duluth and of extensive yards in Duluth. Its stock and bonds are all owned by the Eastern Railway Co. of Minnesota. Under the franchise of the Duluth Terminal Railway Co. its earnings derived from trackage are limited to six per cent on its stock and bonds; the interest and dividends paid, amounting to $13,500, are not included in the "Miscellaneous Income" above shown.

DEFENDANTS' EXHIBIT C. 1075

REVENUE ACCOUNT. 4283

GREAT NORTHERN RAILWAY COMPANY.

EARNINGS FROM OPERATION OF THE LINES LEASED BY THE GREAT NORTHERN RAILWAY COMPANY AND LINE OF THE SEATTLE & MONTANA RAILROAD CO.

YEAR ENDED JUNE 30TH, 1902.

EARNINGS:			
Freight	$21,002,636.68		
Passenger	5,690,996.13		
Mail	708,290.64		
Express	324,211.69		
Miscellaneous	670,999.76		
Gross Earnings		$28,397,134.90	4284
OPERATING EXPENSES:			
Conducting Transportation	$7,069,911.71		
Maintenance of Equipment	2,169,783.07		
Maintenance of Road and Structures	3,792,051.97		
General Expenses	1,112,014.99		
Total Operating Expenses	$14,143,761.74		
TAXES	984,375.37		
		15,128,137.11	
Income from Operation		$13,268,997.79	
From which have been paid:			
RENTALS:			
To St. P., M. & M. Ry. Co.:			
Guaranteed Interest on St. P., M. & M. Ry. Co.'s Bonds, Paid and Accrued.. (For Details see Page 32.)	$3,471,414.01		4285
Guaranteed Dividends of 6 per cent on Capital Stock of St. P., M. & M. Ry. Co..	1,200,000.00		
Maintenance of Organization of St. P., M. & M. Ry. Co	6,346.62		
To Eastern Ry. Co. of Minnesota:			
Guaranteed Interest on Bonds and Guaranteed Dividends of 6 per cent on the Capital Stock of Eastern Ry. Co. of Minnesota, paid or accrued	232,500.00		
Other Rentals	165,049.03		
Total Rentals	$5,075,309.66		
From which deduct amount received by Great Northern Ry. Co. as dividends paid or accrued on Stocks of the St. P., M. & M. Ry. Co. and Eastern Ry. Co. of Minnesota owned by it	1,332,764.00		4286
Net	$3,742,545.66		
IMPROVEMENTS:			
Amount transferred to Fund for Permanent Improvements and Renewals	2,000,000.00		
Total		5,742,545.66	
Balance transferred to Income Account		$7,526,452.13	

4287

4288 INCOME ACCOUNT GREAT NORTHERN RAILWAY COMPANY.

YEAR ENDED JUNE 30th, 1902.

Balance transferred from revenue account.		$7,526,452.13
Other Income:		
Interest on bonds owned.....	$380,635.00	
Dividends on stocks owned.....	1,419,960.32	
Rentals of leased lines.....	176,484.89	
Bills receivable (land notes).....	2,059.34	
Rental of equipment and car service...	180,273.19	
Profit on securities sold during year...	363,177.45	
4289 Income from other sources—ground rents, miscellaneous items, etc.....	293,868.24	2,816,458.43
Total income		$10,342,910.56
From which have been paid dividends as follows:		
Aug. 1, 1901, 1¾ per cent on $98,716,600.	$1,727,540.50	
Nov. 1, 1901, 1¾ per cent on $123,730,100	2,165,276.75	
Feb. 1, 1902, 1¾ per cent on $123,788,000.	2,166,290.00	
May 1, 1902, 1¾ per cent on $123,817,900.	2,166,813.25	$8,225,920.50
Balance transferred to profit and loss		$2,116,990.06

DEFENDANTS' EXHIBIT C. 1077

4290

DETAILS OF OTHER INCOME.

Interest on Bonds Owned:		
Town of Wadena bonds	$240.00	
Town of Sandness bonds	120.00	
Town of Leaf River bonds	120.00	
Town of Hutchinson bonds	315.00	4291
Town of Minnesota Falls bonds	120.00	
Duluth Terminal Ry. Co. bonds	5,250.00	
Montana Central Ry. Co. bonds	32,500.00	
Willmar & Sioux Falls Ry Co. bonds	1,050.00	
Park Rapids & Leech Lake Ry. Co. bonds	12,500.00	
Butte, Anaconda & Pacific Ry. Co. bonds.	50,000.00	
Spokane Falls & Northern Ry. Co. bonds.	154,800.00	
Nelson & Fort Sheppard Ry. Co. bonds	77,580.00	
Columbia & Red Mountain Ry. Co. bonds.	17,460.00	
Red Mountain Ry. Co. bonds	13,020.00	
St. P., M. & M. Ry. Co.'s Montana extension bonds	15,560.00	
		4292
Total		$380,635.00
Dividends on Stocks Owned:		
Northern Steamship Co. stock	$150,000.00	
Great Northern Ry. Co. stock	3,060.32	
St. Paul Union Depot Co. stock	1,750.00	
Minneapolis Union Ry. Co. stock	25,000.00	
Duluth Terminal Ry. Co. stock	3,000.00	
Park Rapids & Leech Lake Ry. Co. stock.	35,000.00	
Eastern Ry. Co. of Minnesota stock	800,000.00	
Willmar & Sioux Falls Ry. Co. stock	350,000.00	
Red Mountain Ry. Co. stock	9,530.00	
Columbia & Red Mountain Ry. Co. stock.	13,220.00	4293
Butte, Anaconda & Pacific Ry. Co. stock..	29,400.00	
Total		$1,419,960.32

4294 **STATISTICS OF FREIGHT AND PASSENGER TRAFFIC ON SYSTEM**

(But NOT including Spokane Falls & Northern Railway System) FOR THE YEAR ENDED JUNE 30th, 1902, COMPARED WITH THE PREVIOUS YEAR.

Description.	1902	1901	Increase. Amount.	Increase. Per Cent
FREIGHT TRAFFIC.				
Mileage of Freight Trains	6,861,788	5,627,697	1,234,091	21.9298
4295 Mileage of Mixed Trains	777,704	881,061	*Decrease.* 103,357	11.7310
Total	7,639,492	6,508,758	*Increase.* 1,130,734	17.3725
Mileage of Locomotives employed in "helping" Freight and Mixed Trains	307,574	304,331	3,243	1.0656
Percentage of "helping" to Revenue Train Mileage	4.0261	4.6757	.2868	
Mileage of Loaded Freight Cars	187,292,935	154,527,689	32,765,246	21.2035
Mileage of Empty Freight Cars	64,312,308	44,468,558	19,843,750	44.6242
4296 Total Car Mileage	251,605,243	198,996,247	52,608,996	26.4372
Tons of Freight Carried, Revenue	13,237,363	9,925,811	3,311,552	33.3630
Company	1,862,455	1,592,440	270,015	16.9561
Total	15,099,818	11,518,251	3,581,567	31.0947
Tons of Revenue Freight Carried One Mile	3,190,217,482	2,481,751,195	708,466,287	28.5470
Earnings from Freight Traffic	$27,813,080.10	$21,998,491.43	$5,814,588.67	26.4315
4297 **Averages.**				
All Cars Handled per Freight Train Mile	32.93	30.57	2.36	7.7200
Tons Revenue Freight Hauled per Train	417.595	381.294	36.301	9.5205
Tons Revenue Freight Hauled per Loaded Car	17.033	16.060	.973	6.0585
Earnings per Freight Train Mile	$3.64	$3.38	$0.26	7.6923
Earnings per Ton per Mile	*Cents* .859	*Cents* .871	*Decrease. Cents* .012	1.3777

STATISTICS OF FREIGHT AND PASSENGER TRAFFIC ON SYSTEM—Continued.

DESCRIPTION.	1902.	1901.	INCREASE.	
			Amount.	Per Ct.
PASSENGER TRAFFIC.				
Mileage of Passenger Trains	4,614,850	4,284,900	329,950	7.7003
Mileage of Locomotives employed in "helping" Passenger Trains	41,982	52,862	*Decrease.* 10,980	20.6765
Percentage of "helping" to Revenue Train Mileage	0.9096	1.2337	*Increase.* 3.3126	
Passengers Carried	3,493,245	2,717,851	775,394	28.5297
Passengers Carried One Mile	286,320,423	214,392,859	71,927,564	33.5494
Earnings of Passenger Trains	$8,194,964.77	$6,325,873.69	$1,869,091.08	29.5468
AVERAGES.				
Earnings per Passenger Train Mile	$1.5197	$1.2245	$0.2952	24.1078
Earnings per Passenger per Mile	*Cents* 2.327	*Cents* 2.290	*Cents* 0.037	1.6157
TOTAL TRAINS.				
Mileage of Freight and Passenger Trains	12,254,842	10,796,058	1,460,784	13.5328
Earnings from Freight and Passenger Trains	$30,007,994.87	$23,324,365.12	$7,683,629.75	27.1278
Earnings per Train per Mile	2.94	2.63	.31	11.7871
Expenses per Train per Mile	1.45	1.47	*Decrease.* .02	1.3605
Net Traffic Earnings per Train per Mile	1.49	1.16	*Increase.* .33	28.4483

NOTE—The train, locomotive and car mileage figures given above have been compiled and all computations based upon them made in accordance with the rules of the Interstate Commerce Commission.

4302 **STATEMENT OF BONDS AND STOCK OUTSTANDING IN THE HANDS OF THE PUBLIC FOR WHICH THE GREAT NORTHERN RAILWAY COMPANY IS RESPONSIBLE DIRECTLY OR UNDER GUARANTEE.**

Outstanding July 1, 1901.	BONDS.	Outstanding July 1, 1902.	Annual Charges Paid 1901–1902.
	ST. P., M. & M. RY.:		
$7,860,000.00	Second Mortgage, 6 per cent.....	$7,503,000.00	$463,775.00
5,625,000.00	Dakota Extension, 6 per cent.....	5,576,000.00	335,880.00
13,344,000.00	Consolidated Mortgage, 6 per cent	13,344,000.00	800,640.00
20,756,000.00	Consolidated Mortgage, 4½ per ct.	20,156,000.00	919,867.50
7,907,000.00	Montana Extension, 4 per cent....	10,185,000.00	369,433.33
14,545,454.54	Pacific Extension, 4 per cent.....	*14,545,454.54	581,818.18
	Total shown on page 27.....		$3,471,414.01
4303			
	EASTERN RY. OF MINN.:		
4,700,000.00	First Div., First Mt'ge, 5 per cent.	4,700,000.00	$235,000.00
5,000,000.00	Nor. Div., First Mt'ge, 4 per cent..	5,000,000.00	200,000.00
	MONTANA CENTRAL RY.:		
6,000,000.00	First Mortgage, 6 per cent.....	6,000,000.00	360,000.00
4,000,000.00	First Mortgage, 5 per cent.....	4,000,000.00	200,000.00
	WILLMAR & SIOUX FALLS RY.:		
3,646,000.00	First Mortgage, 5 per cent.....	3,646,000.00	182,300.00
	MINNEAPOLIS UNION RY.:		
2,150,000.00	First Mortgage, 6 per cent.....	2,150,000.00	129,000.00
650,000.00	First Mortgage, 5 per cent.....	650,000.00	32,500.00
	MINNEAPOLIS WESTERN RY.:		
500,000.00	First Mortgage, 5 per cent.....	500,000.00	25,000.00
$96,683,454.54	Total Bonds on Railway property.	$97,975,454.54	$4,835,214.01
4304			
	STOCK:		
$454,600.00	ST. P., M. & M. Ry.—6 per cent guaranteed, unchanged.....	$453,600.00	† Net $27,236.00
$97,138,054.54	.....Total.....	$98,429,054.54	$4,862,450.01
$98,711,750.00	Great Northern Railway Company, outstanding.....	$125,853,000.00	$8,225,939.50

Bonds on railway property, outstanding as above.....	$97,975,454.54
Outstanding capital stock of Great Northern and St. P., M. & M. Ry. Companies.....	124,306,600.00
Total capitalization of system.....	$222,282,054.54
Mileage of track in system, including second, third, fourth, fifth and sixth tracks, covered by above capitalization as shown on page 30.....	5,926.84
Stocks and bonds per mile of main track.....	$37,504.21
Mileage of main tracks covered by bonds in hands of public..	4,734.10
4305 Bonded debt outstanding per mile of main track covered thereby	$20,695.69

*Not including £3,000,000 St. P., M. & M. Ry. Co.'s Pacific Extension bonds in treasury of Great Northern Railway Company.

†Difference between amount of rental accrued under lease and dividends received or accrued on St. P., M. & M. Ry. stock owned by Great Northern Railway Company.

In addition to the bonds above listed, the Great Northern and Northern Pacific Railway Companies have issued their joint C., B. & Q. collateral 4 per cent bonds and scrip to the amount of $215,154,400.00, secured by the deposit with the Standard Trust Company of New York, as trustee, of 1,075,772 shares of the capital stock of the Chicago, Burlington & Quincy Railroad Company.

DEFENDANTS' EXHIBIT C. 1083

EQUIPMENT OF GREAT NORTHERN RAILWAY COMPANY AND PROPRIETARY LINES. 4314

FOR YEAR ENDED JUNE 30TH, 1902, AS COMPARED WITH YEAR ENDED JUNE 30TH, 1901.

CLASS.	1902.	1901.	
Locomotives	608	563	
PASSENGER EQUIPMENT.			
Sleeping Cars	48	50	
Parlor Cars	5	5	
Dining Cars	16	12	
Buffet Smokers	8	8	
Coaches	214	163	
Tourist Cars	24	24	4315
Passenger and Baggage	36	35	
Baggage, Mail and Express	116	110	
Business Cars	19	18	
Total Passenger Equipment	486	425	
FREIGHT EQUIPMENT.			
Box Cars	15,915	14,582	
Combination Box and Stock Cars	745	750	
Transfer Freight Cars	50	50	
Furniture Cars	1,152	1,152	
Hay Cars	6	6	
Refrigerator Cars	404	209	
Stock Cars	627	627	4316
Flat and Coal Cars	3,544	3,312	
Sand Cars	600	600	
Ore Cars (wood)	1,101	1,101	
Ore Cars (steel)	800	600	
Ballast Cars	764	764	
Caboose Cars	390	340	
Cinder Cars	68	53	
Boarding Cars	52	51	
Derrick and Tool Cars	47	47	
Steam Shovels	19	19	
Lidgerwood Unloaders	13	12	
Ditching Cars	1	1	
Pile Drivers	10	10	4317
Rotary Snow Plows	6	6	
Snow Dozers	16	15	
Flangers	1	1	
Logging Trucks	126	100	
Other Work Equipment	88	85	
Total Freight and Work Equipment	26,545	24,493	

4318

TRACK STATEMENT.

GREAT NORTHERN RAILWAY AND PROPRIETARY LINES.

Lines Operated by the Great Northern Ry. Co.:	Miles.	Main Track Miles.	Total Miles.
Leased from St. P., M. & M. Ry. Co.:			
First main track		3,799.19	3,799.19
Second track	30.61		
Third track	9.28		
Fourth, fifth and sixth tracks	13.05		52.94
Total main track			3,852.13
Side tracks			707.81
4319			
Total miles of tracks owned by St. P., M. & M. Co.			4,559.94
Leased from Eastern Ry. Co. of Minnesota			666.72
First main tracks		469.83	
Second track	25.49		
Side tracks	171.40		
	Side Track Miles.		
Duluth Terminal Railway	3.66	1.82	5.48
Leased from Park Rapids & Leech Lake Ry. Co.	7.15	49.04	56.19
Leased from Dakota & Great Northern Ry. Co.	2.61	40.44	43.05
Tracks of the Seattle & Montana R. R. Co., operated by G. N. Ry.	46.52	204.66	251.18
Spur to Flathead Lake, at Kalispell, Mont.			12.18
Total tracks operated by Great Northern Ry. Co., June 30, 1902		4,564.98	5,594.74
Proprietary Companies:			
4320 Willmar & Sioux Falls Ry. Co.	48.94	433.41	482.35
Leased tracks between Sioux City, Ia., and South Sioux City, Neb.		3.32	3.32
Duluth, Watertown & Pacific Ry. Co.	4.08	69.84	73.92
Montana Central Ry. Co.	55.52	260.51	316.03
Minneapolis Union Ry. Co.	4.74	2.63	10.00
Second track	2.63	.....	
Minneapolis Western Ry. Co.	5.04	1.69	6.73
Total miles of road in system as operated June 30, 1902		5,336.38	
Total miles of track, all kinds, in system as operated June 30, 1902			6,487.09
Other Companies:			
Spokane Falls & Northern Ry. system (operated separately)	23.40	203.03	226.43
Montana & Great Northern Ry. Co.			196.28
Jennings, Mont., to International Boundary (opened July 10, 1902)	5.40	50.98	
4321 Great Falls, Mont., to International Boundary (under reconstruction)	5.53	134.37	
Crow's Nest Southern Ry. Co.			53.37
International Boundary to Morrissey, B. C. (opened Sept. 15, 1902)	4.90	48.47	
Washington & Great Northern Ry. Co.	4.49	59.58	64.07
Vancouver, Victoria & Eastern Ry. & Navigation Co., Marcus, Wash., to Grand Forks, B. C., and Republic, Wash. (opened Aug. 17, 1902)	2.58	16.29	18.87
Total miles of road in system including lines operated separately and under construction		5,849.10	7,046.11

DEFENDANTS' EXHIBIT C. 1085

4322

TRACK STATEMENT—*Continued.*

Recapitulation of Track Mileage:			
First main track	5,845.78		
Second track	58.73		
Third, fourth, fifth and sixth tracks	22.33		
Total main tracks covered by capitalization given on page 32	5,926.84		
Leased tracks	3.32		
Side and spur tracks	1,115.95		
Total tracks, all kinds, in system, including lines operated separately and under construction		7,046.11	
Note—Total mileage of road in system as operated June 30th, 1902, as shown on page 35	5,336.38		
Total mileage of road in system, June 30th, 1901, per report for that year		5,244.43	4323
Increase in mileage		91.95	
This increase is made up as follows:			
Seattle & Montana R. R.:			
Line from Anacortes to Rockport, Wash., purchased from Seattle & Northern Ry. Co.	54.42		
Mileage owned by S. & M. R. R. Co. but heretofore leased to Seattle & Northern Ry. Co.	3.82		
New lines constructed at Everett, Wash., net additional mileage	3.32		
		61.56	
Dakota & Great Northern Ry.:			
New lines constructed during year:			
Bottineau to Souris, N. D.	12.72		
Lakota to Edmore, N. D.	27.72		
		40.44	
Total increase		102.00	
Less Decreases in Mileage:			
St. P., M. & M. Ry.:			
Change of line between Portage and Great Falls, Montana	3.43		4324
Change of line at Edwall, Wash.	.01		
Change of line at Harrington, Wash.	.22		
Change of line at Wenatchee River, Wash.	.13		
	3.79		
Eastern Ry. of Minnesota:			
Track between Brace Junction, Minn., and Pokegama Junction, Wis., removed	6.26		
Total deduction		10.05	
Net increase in mileage		91.95	

4325

LAND COMMISSIONER'S REPORT.

MR. JAMES J. HILL, President.

4326 DEAR SIR: I respectfully submit the following report regarding the *Minneapolis & St. Cloud Land Grant* for the fiscal year ended June 30th, 1902:

An adjustment of this grant has been arrived at with the State of Minnesota, during the year.

	Acres.	Acres.
The total acreage earned is		425,664.00
Of which there has been deeded to the Company	425,660.90	
Total acreage sold to June 30th, 1902, less sales canceled		402,609.78
4327 Value of same	$1,290,560.20	
Average price per acre	3.21	
Remaining unsold June 30th, 1902		23,054.22

OPERATIONS DURING THE YEAR.

Sales, acres	281,228.19
Amount sold for	$495,686.32
Average price per acre	1.76
Receipts of Land Department	545,751.71
Disbursements of Land Department	6,124.77
4328 Amount of deferred payments due Company which are bearing interest at six and seven per cent	459,071.09

CHARLES H. BABCOCK,
Land Commissioner.

DEFENDANTS' EXHIBIT C. 1087

4329

ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY'S SINKING FUND ACCOUNT CONSOLIDATED MORTGAGE FUNDS.

July 1st, 1901. *By* balance to credit of Sinking Fund, as per page 41 of last year's report.....	$15,672.99	
June 30th, 1902. From Land Department, as per Land Commissioner's Report on page 42.....	1,178,392.73	4330
Revenue Todd County lands.....	3,859.64	
Total Credits	$1,197,925.36	

DEBITS:

To Bonds purchased by Trustee and canceled.

Date.	Amount.	Price.	Cost.		
July 16, 1901	$3,000.00	113⅝	$3,416.25		
July 19, 1901	15,000.00	113⅝	17,081.25		
Aug. 19, 1901	4,000.00	114¼	4,570.00		
Aug. 27, 1901	2,000.00	113⅜	2,267.50		
Aug. 30, 1901	3,000.00	114¼	3,427.50		
Sept. 25, 1901	7,000.00	114	7,980.00		4331
Oct. 2, 1901	1,000.00	114⅜	1,143.75		
Oct. 2, 1901	12,000.00	114½	13,740.00		
Oct. 14, 1901	3,000.00	114⅜	3,431.25		
Oct. 28, 1901	35,000.00	115½	40,425.00		
Nov. 12, 1901	20,000.00	116¼	23,225.00		
Nov. 13, 1901	9,000.00	116⅜	10,473.75		
Nov. 14, 1901	3,000.00	116¼	3,483.75		
Nov. 22, 1901	1,000.00	116¼	1,162.50		
Dec. 2, 1901	3,000.00	116¼	3,483.75		
Dec. 3, 1901	3,000.00	116¼	3,487.50		
Dec. 3, 1901	20,000.00	116¼	23,250.00		
Dec. 12, 1901	10,000.00	116½	11,625.00		
Dec. 13, 1901	5,000.00	116½	5,812.50		4332
Dec. 27, 1901	26,000.00	116	30,160.00		
Dec. 30, 1901	1,000.00	116¼	1,161.25		
Dec. 31, 1901	5,000.00	116⅜	5,818.75		
Jan. 6, 1902	1,000.00	114	1,140.00		
Jan. 7, 1902	5,000.00	113¾	5,681.25		
Jan. 9, 1902	5,000.00	113⅞	5,687.50		
Forward....	$202,000.00		$233,135.00	$1,197,925.36	

	Date.	Amount.	Price.	Cost.	
	Brought forw'd	$202,000.00		$233,135.00	$1,197,925.36
	Jan. 9, 1902	4,000.00	116½	4,650.00	
	Jan. 10, 1902	11,000.00	114⅛	12,553.75	
	Jan. 13, 1902	1,000.00	114	1,140.00	
	Jan. 14, 1902	50,000.00	114⅛	57,062.50	
	Jan. 14, 1902	11,000.00	114	12,540.00	
	Jan. 16, 1902	6,000.00	114	6,840.00	
	Jan. 17, 1902	1,000.00	114	1,140.00	
	Jan. 22, 1902	1,000.00	114	1,140.00	
	Jan. 27, 1902	10,000.00	114⅛	11,412.50	
	Jan. 28, 1902	4,000.00	114	4,560.00	
4334	Jan. 29, 1902	2,000.00	114	2,280.00	
	Jan. 30, 1902	15,000.00	114	17,100.00	
	Feb. 4, 1902	1,000.00	114	1,140.00	
	Feb. 4, 1902	7,000.00	114⅛	7,988.75	
	Feb. 6, 1902	9,000.00	114	10,260.00	
	Feb. 6, 1902	3,000.00	114	3,420.00	
	Feb. 6, 1902	10,000.00	114⅛	11,412.50	
	Feb. 10, 1902	26,000.00	114⅛	29,672.50	
	Feb. 10, 1902	2,000.00	114½	2,290.00	
	Feb. 11, 1902	6,000.00	114	6,840.00	
	Feb. 19, 1902	8,000.00	114½	9,160.00	
	Feb. 25, 1902	18,000.00	114¼	20,565.00	
4335	Mar. 7, 1902	1,000.00	114⅛	1,146.25	
	Mar. 26, 1902	1,000.00	114¼	1,142.50	
	April 8, 1902	38,000.00	115¼	43,747.50	
	April 8, 1902	10,000.00	115	11,500.00	
	April 8, 1902	10,000.00	115½	11,550.00	
	April 17, 1902	1,000.00	115	1,150.00	
	May 2, 1902	1,000.00	115¾	1,157.50	
	May 5, 1902	2,000.00	115¼	2,305.00	
	May 5, 1902	35,000.00	115⅛	40,468.75	
	May 8, 1902	15,000.00	116¼	17,418.75	
	May 9, 1902	5,000.00	115⅝	5,781.25	
	May 12, 1902	15,000.00	116¼	17,418.75	
	May 12, 1902	19,000.00	116	22,040.00	
4336	May 13, 1902	65,000.00	115⅞	75,318.75	
	May 14, 1902	5,000.00	115¼	5,762.50	
	May 15, 1902	200,000.00	115¾	231,500.00	
	May 15, 1902	1,000.00	115½	1,155.00	
	May 16, 1902	2,000.00	115¾	2,315.00	
	Forward....	$834,000.00		$961,180.00	$1,197,925.36

DEFENDANTS' EXHIBIT C. 1089

Date.		Amount.	Price.	Cost.		
Brought forw'd		$834,000.00		$961,180.00	$1,197,925.36	4337
May	19, 1902	2,000.00	115¼	2,310.00		
May	19, 1902	2,000.00	115¼	2,305.00		
May	19, 1902	4,000.00	115⅞	4,635.00		
May	21, 1902	1,000.00	115¾	1,153.75		
May	22, 1902	4,000.00	116	4,640.00		
May	22, 1902	2,000.00	115⅛	2,317.50		
May	23, 1902	2,000.00	115⅛	2,317.50		
May	26, 1902	2,000.00	115⅛	2,317.50		
May	26, 1902	50,000.00	115½	57,750.00		
May	26, 1902	1,000.00	115½	1,157.50		
May	31, 1902	2,000.00	116	2,320.00		
June	4, 1902	11,000.00	116	12,760.00		4338
June	9, 1902	3,000.00	115½	3,457.50		
June	9, 1902	2,000.00	115¼	2,305.00		
June	9, 1902	1,000.00	116	1,160.00		
June	10, 1902	50,000.00	115½	57,625.00		
June	10, 1902	1,000.00	115½	1,155.00		
June	10, 1902	1,000.00	116	1,160.00		
June	13, 1902	24,000.00	115⅞	27,780.00		
June	17, 1902	1,000.00	115½	1,157.50		
June	17, 1902	3,000.00	115⅝	3,468.75		
June	20, 1902	1,000.00	115¾	1,158.75		
June	23, 1902	5,000.00	115⅝	5,781.25		
June	30, 1902	2,000.00	115.68	2,313.67		
June	30, 1902	1,000.00	115⅛	1,156.25		4339
Total		$1,012,000.00	Costing		1,166,842.42	
June 30, 1902. Balance, being funds applicable for further redemption of bonds..					$31,082.94	

4340

REPORT OF LAND COMMISSIONER, ST. PAUL, MINNEAPOLIS & MANITOBA RY. CO.

To MR. LOUIS W. HILL, President,

St. Paul, Minneapolis & Manitoba Ry. Co.

DEAR SIR: I respectfully submit the following report of operation of the Land Department for the year ended June 30th, 1902.

		Acres.	Acres.
4341	Total Acreage of Land Grant computed at ten sections for each mile of road, as formerly construed by the State of Minnesota.....		3,848,000.00
	Total Acreage of Land Grant, as construed by United States General Land Office.....		3,479,611.36
	Total Acreage deeded to Company prior to June 30th, 1902.....	3,220,760.30	
	Less decreed to Northern Pacific R. R. Co. by Supreme Court United States, March 2d, 1891.....	365,860.92	
	Decreed to Northern Pacific R. R. Co. in accordance with terms of		
4342	settlement of November 1st, 1897	48,916.08	
	Redeeded to United States.....	3,330.02	
		418,107.02	
	Net Acreage deeded.....	2,802,653.28	
	Total Acreage sold prior to June 30th, 1902.	2,967,261.17	
	Less sales canceled.....	303,738.92	
			2,663,522.25
	Remaining unsold June 30th, 1902.....		816,089.11

4343 Owing to sales and other disposals of land within the limits of the Grant by the United States prior to the time at which this Company's right attached, a final adjustment of the Grant by the Government, which is approaching completion, will reduce the above area by about 600,000 acres.

During the year ended June 30th, 1902, 124,179.99 acres of land were sold for $1,129,277.71, an average of $9.09 per acre. There were also sold 819 town lots for $15,003.20, an average price per lot of $18.32.

The number of land sales during the year was 1,412, with an average of about 88.00 acres to each purchase.

DEFENDANTS' EXHIBIT C. 1091

4344

CASH RECEIPTS OF LAND DEPARTMENT FOR YEAR ENDED JUNE 30th, 1902.

Cash Sales and Installments of Principal on New Land Contracts	$146,042.23	
Amount of Principal received on Old Contracts	883,480.06	
Amount received for Trespass, Stumpage, Grass Sales, etc.	5,208.24	
Amount received for Interest on Old and New Contracts.	187,774.39	
Amount received for Principal and Interest on Town Lot Contracts	21,574.17	
	$1,244,079.09	
Less Expense of Land Department and Trustee	65,686.36	4345
Net Receipts	$1,178,392.73	
Amount of Deferred Payments due this Company on Land Contracts bearing interest at 7 and 6 per cent	$3,266,741.76	
Amount of Deferred Payments due this Company on Town Lots bearing interest at 7 and 6 per cent	10,745.49	
	$3,277,487.25	

Referring to that portion of report for the year ending June 30th, 1893, relating to lands lying within the limits of the grant on the Dakota side of the Red River, the Company has reconveyed to the United States a total of 63,477.92 acres, for which the Company is authorized to locate an equivalent amount elsewhere. The Company has selected to June 30th, 1902, 55,242.20 acres in lieu of a part of the above amount. 4346

The following are the sales during the year covered by the Dakota Grant, viz.:

172.95 acres for $3,507.05, an average per acre of	$20.27	
Receipts during the year		$28,892.65
Taxes paid, Expenses of Examination and Selection of Land and other Disbursements made during the year in connection with Grant		3,133.49

4347

The remaining lands are in process of adjustment with the Government.

CHARLES H. BABCOCK,
Land Commissioner.

4348 **The following is a copy of the acts of the legislature of the State of Minnesota constituting the charter of the Great Northern Railway Company, with the amendments thereto, as the same appear in Vol. 2 of the case of the United States vs. Northern Securities Company et al., at pages 433 to 464, inclusive, offered by the defendants as original evidence in this case, marked by the Examiner *Exhibit D:***

4349 LAWS CONSTITUTING CHARTER OF GREAT NORTHERN RAILWAY COMPANY.

CHAPTER CLX.

Laws of 1856.

AN ACT to Incorporate the Minneapolis and Saint Cloud Railroad Company.

Be it enacted by the legislative assembly of the Territory of Min-
4350 *nesota:*

Section 1. John H. Stevens, William Hanson, Franklin Steele, Alfred E. Ames, R. P. Russell, J. P. Wilson, J. L. Crocker, George F. Brott, J. M. Winslow, A. M. Fridley, John Banfil, and all such other persons as shall hereafter become stockholders in the company hereby incorporated, shall be and are hereby made a body politic and corporate, by the name and style of the "Minneapolis and Saint Cloud Railroad Company," and by and under that name and style shall be capable of suing and being sued, impleading and being im-
4351 pleaded, defending and being defended against in law and equity, in any and all courts and places whatsoever, as fully as natural persons; and the said corporation may make and use a common seal, and alter and renew the same at pleasure, and by their corporate name and style shall be capable of contracting and being contracted with, and by acquiring by purchase, gift, grant, devise or otherwise, and of holding and conveying all such estate and property, real and personal, as

may be necessary or convenient to carry into effect the object 4352
and purposes of this act and of the said corporation.

Sec. 2. The said corporation is hereby authorized and empowered, and it is hereby declared to be the objects and purposes thereof, to survey, locate, construct, complete, maintain, use and operate, and at their pleasure alter the line thereof, a railroad with one or more tracks or lines of rails, from a point to be selected by this company, in Minneapolis, in the county of Hennepin, in the territory of Minnesota, by the most feasible and practicable route to Saint Cloud, in the county of Stearns, on the Mississippi river; and also a main 4353
line of road by way of Mille Lac to a point at or near the mouth of the Saint Louis river, together with all necessary and proper stations, depots, turn-outs, engines, cars, and other appurtenances and furniture of a railroad.

Sec. 3. The capital stock of the corporation hereby created shall be two millions of dollars, and shall be divided into shares of one hundred dollars each, which shall be deemed personal property, and shall be transferable in such manner as the corporation by its regulations or by-laws shall prescribe, but no share of said stock shall be transferred while there shall be any installments assessed thereon unpaid, and 4354
the directors of said corporation may, with the consent of the holders of a majority of the stock thereof, increase the capital stock thereof to such sum as may be necessary or convenient to carry into effect all the rights and privileges hereby granted thereto, not exceeding thirty millions of dollars. The shares of any increase of stock shall be the same and transferable in the same manner, as the shares of the original stock.

Sec. 4. The said company is hereby authorized to borrow money to be expended in the construction and equipment of their said road and its appendages, and to issue bonds for the 4355
payment thereof in the usual form; such bonds not to exceed in the aggregate at the period of the completion of said road, three-fourths of the whole amount actually expended on said road and its appendages aforesaid; and may make and execute in the corporate name of said company all necessary mortgages, writings, notes, bonds or other papers, for

4356 any liability that it may incur in the construction or equipment of said road.

Sec. 5. The said company is hereby authorized and empowered to construct their said railroad and its branches in sections as fast as they may obtain the means for so doing; and the franchise of the portions so completed and put in operation, shall vest in said company the same as though the whole was completed.

Sec. 6. Said company is hereby authorized and empowered to connect its road by branches with the road of any rail-
4357 road company or companies in the territory or future state of Minnesota, that are now chartered or may hereafter be chartered, or to become part owner or lessee of any railroad in said territory, and any railroad company in said territory of Minnesota, duly organized, or which may hereafter be organized, under the laws of said territory or future state of Minnesota, may connect its road with the road of said company, and may in like manner with the consent of said company become part owner or lessee of the road of said company, or of any of its branches, or any portion thereof, situated in this territory, and the said company are hereby au-
4358 thorized and empowered to run a branch of said road from Minneapolis, by way of West St. Paul to some point to be selected by said company on the Iowa state line.

Sec. 7. The said corporation shall have the right of way upon and may appropriate to its own use and control, for the purpose of the said railroad and its appurtenances, land not exceeding two hundred feet in width throughout its entire length, and may, by its engineers, agents and contractors, enter upon and take possession of, and use all and singular, any lands, streams, timber and materials of any and every kind, for the purpose of making the survey and location of
4359 said railroad; and of all stations, depots, turn-outs and other things necessary, proper or convenient for the same, and the full use and protection thereof, and of all its appendages and appurtenances.

Sec. 8. The said corporation may take and hold for the said purposes or any of them, such additional lands as may be requisite or convenient therefor; but unless such lands taken by said corporation for any of said purposes shall be

purchased of, or voluntarily given by, the owner or owners 4360
thereof, full and proper compensation therefor shall be made by said corporation to the owner or owners thereof, which compensation shall be ascertained and determined in the manner following.

The said party or parties interested may present to a court, in the county in which the lands or real estate proposed to be taken shall be situate, having jurisdiction competent to entertain, adjudicate and determine questions of title to real estate, a petition signed by him or them, describing with reasonable certainty and accuracy, by map, plat, survey, or oth- 4361
erwise, the lands or real estate so proposed or required to be taken and setting forth the name of each and every owner, incumbrancer, and other persons interested in the same or any part thereof, so far as the same can be ascertained by the legal records affecting the same, and by view of the premises, or other inquiry touching the occupation thereof, and praying the appointing of three competent, disinterested persons, who shall be freeholders in said county, as commissioners to ascertain and determine the compensation to be made to the said owner or owners, respectively, and to all tenants, incumbrancers, and others interested for the taking or injuriously 4362
affecting such land or real estate. A copy of such petition, with a notice of the time and place, when and where the same will be presented to the court, shall be served on each and every person named therein as owner, incumbrancer, tenant, or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such service shall be made by delivering such copy of petition and notice to each of the persons so named therein, if a resident of this territory, or, in case of the absence of such person, by leaving such copy of petition and notice at his or her usual place of abode, with some person of 4363
sufficient age and understanding to comprehend the object thereof, which shall be communicated to such person, with a request to deliver the same to the individual for whom it is thus left at the earliest opportunity. In case there shall be any persons named in such petition who are not residents of this territory, and upon whom service cannot be made in the manner above prescribed, a notice stating briefly the objects

of the petition, a description of the lands proposed to be taken, and the time and place of the presenting the petition to the court, and directed to such person or persons, shall be published in the newspaper published nearest the location of such lands, and in a newspaper published at the seat of government of the territory or state in which the lands shall be situate, once in each week for six consecutive weeks previous to the time designated for presenting such petition. The court to whom such petition shall be presented shall not make any order for the appointment of commissioners to ascertain and determine the compensation to be paid to any owner or person who shall not appear in person or by attorney, or counsel, except upon proof by affidavit, and to the satisfaction of the court, of the service of the petition and notice in the manner hereinbefore prescribed, but may do so upon the appearance of the party or parties, or upon such proof of service in the absence of a party or parties. The court may, upon the application of the said corporation, or of any owner or party interested, for reasonable causes adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected thereby. When the court shall have prove satisfactory that all parties interested in any parcel of land have been duly served with the petition and notice in the manner herein prescribed, and of the nature and extent of the interest or estate of each and every party in the same, the court may make an order, to be recorded in the minutes thereof, appointing three disinterested, competent persons commissioners to ascertain and determine the amount to be paid by the said corporation to each of such persons, as compensation for his interest or estate in such parcel or parcels of land, and specifying the time and place of the first meeting of such commissioners. Said corporation shall without delay procure and deliver to each of such commissioners a copy of such order. Before the said commissioners shall enter upon the discharge of their duties, they shall respectively take and subscribe an oath that they will faithfully and impartially, and without fear, favor, reward, or the hope or promise of reward, discharge their duties as commissioners to ascertain and determine the compensation to be paid by the Minneapolis and

Saint Cloud Railroad Company, (here insert the names of the 4368
person whose property is to be apprais.) for lands or interest in lands to be taken for the use of said company. Such oath may be taken before any officer authorized by law to administer oaths. Whenever the place of any commissioner shall become vacant, the court may, upon such notice to the parties as he may prescribe, by like order, supply the place by the appointment of another person as such commissioner, who shall be in like manner served with a copy of the order appointing him, and take the like oath. The commissioners shall meet at the time and place specified in the order 4369
appointing them, and in the order supplying any vacancy in such commission. When met and all present, (they) may proceed to the hearing of the proofs and allegations of the parties present, or reasonably notified by the company to be present, and authorized to administer oaths to witnesses before them; and before making any report they shall, if requested by the party interested, or by either of their number, view the premises for which compensation is to be made, and the amount of which they are to determine. The commissioners may, as the exigency of any case, or the convenience of the parties or themselves may require, adjourn from time 4370
to time and to such places as may, in their judgment, be most conducive to the purposes of their investigations. No proceedings shall be had by the said commissioners unless all of them be present, except to adjourn, but any and every question submitted to them, may be decided by a majority, and shall be valid. The said commissioners shall keep minutes in writing of all their proceedings, in which they shall enter the time and place of their meetings and adjournments, the names of parties appearing before them in person or by attorney, the substance of the testimony of witnesses sworn and examined before them, and all disputed questions which shall 4371
be submitted to them, and their decisions thereon. They shall make and sign a report, which shall contain a description by metes and bounds, survey, map, or plat of each separate parcel of land proposed to be taken by the said company for its use, and the compensation for which they shall ascertain and determine, and the amount (if anything) to be paid by said company to each person whose interests are to be affected there-

4372 by. They shall, as soon as their report shall be made, attach thereto their minutes and oaths of office and file the same in the office of the clerk of the court appointing the said commissioners, and notify the parties interested in such report that the same is made and filed. In case the said company or any person interested in such report shall deem the same unjust in any manner affecting the amount of the compensation to be paid, the company or such party may appeal therefrom at any time within twenty days after the service of notice of filing of said report. The party appealing shall file a notice of such appeal with the clerk of the court with whom
4373 the report shall have been filed, stating the grounds of the appeal, and serve a copy thereof on the opposite party, within the time above prescribed for taking appeal, and by giving a bond in such penalty as the judges of the same court shall prescribe, conditioned to prosecute the appeal without unnecessary delay, to abide the order the court may make on such appeal, and pay the costs of appeal if he shall fail to sustain the grounds of error or injustice prescribed in his notice of appeal. Upon the filing of the notice and bond for appeal with proof by affidavit of the service of such appeal as
4374 above prescribed, all further proceedings on the report shall be stayed until the further order of the court, and the cause upon such appeal shall be entered, proceeded in, and determined in the same manner as cases on appeal from courts of justices of the peace; and in case the appeal shall involve the determination of any question of fact, the same shall be tried by jury, unless the jury shall be waived by both parties. The report of the commissioners shall be final and conclusive unless appealed from in the manner above prescribed. Whenever the company shall take an appeal from any report of commissioners, such appeal shall not stay the work on the
4375 road or other structure on the premises or lands involved in the appeal, provided the company shall deposit in court the amount awarded or assessed by the report, or part or portion of the report, appeal from, to abide the order to be made by the court on the appeal. An appeal from any report, or part or portion of a report, of commissioners by or on the part of any person interested in any parcel of land or real estate proposed to be taken by the company, shall stay all work on the

road or other structure on the premises in question, unless 4376
the company shall deposit in court the amount of money claimed by such appellant before the commissioners, to abide the order of the court on the said appeal. Whenever any report or part of report of commissioners shall have become final, and whenever any appeal from such a report shall have finally determined, the said corporation shall, upon the payment to each party interested the sum thereby determined to be due to him or her as a compensation for property taken, or deposit the same in the court for his or her use, become invested and seized of the title to the lands or real estate for
which such payment or deposit shall have been made, and 4377
entitled to the full, free, and perfect use and occupation of the same for the purposes aforesaid, which are, for all the objects of this act, hereby declared to be public purposes. The said commissioners shall be entitled to receive three dollars per day for their services; and their compensation, and all the fees of officers previous to and including the filing of the report of the commissioners, shall be paid by the said company. In case the title thus acquired to any lands by the said company for their use in the manner hereinbefore mentioned
or otherwise, shall prove defective, they are hereby authorized 4378
to take the proceedings prescribed in this section to procure the title from the real owner.

Sec. 9. If the incorporators named in this act determine to accept this charter, they shall appoint three or more of their number, and such other person or persons as they may deem proper, as agents or commissioners, to receive the subscriptions to the stock of this corporation, and direct the times and places when and where the books for receiving such subscriptions will be opened; and such books may be opened by different agents or commissioners, at different places at the
same time. Every person who shall subscribe for any stock 4379
of this corporation shall, at the time of subscribing, pay to the agent or commissioners two per cent on the amount of stock so subscribed.

Sec. 10. Whenever a hundred thousand dollars shall have been subscribed to the stock of this corporation, and two per cent thereon paid as aforesaid, the stockholders shall meet in person or by proxy, at such time and place as the holders

4380 of a majority of the stock shall prescribe, and proceed to elect twelve directors from among the stockholders, each share of stock being entitled to one vote by the holder thereof, which shall be cast in person or by proxy. The directors shall elect one of their number to be president of the board of directors, and he shall preside at all the meetings thereof at which he shall be present. The directors shall also elect one of their number a vice president, who shall preside in the absence of the president. The directors shall also elect some suitable and competent person to be secretary. They shall
4381 also elect a treasurer, who shall give such security for the safe keeping and payment of the moneys of the company as the directors shall require. At a meeting of the directors seven shall form a quorum for the transaction of business; and all the affairs and business of the said company shall be conducted by or under the directions of the board of directors, and they are authorized for the purposes specified in this act to make and establish regulations and by-laws, and to do all things necessary to be done, and not inconsistent with the constitution and laws of the United States, or by the laws of this territory, or this act.

4382 The directors first elected shall by lot divide into three classes. The first class shall hold their offices one year, and until their successors shall be elected and enter upon their duties; the second class shall hold their offices two years, until their successors be elected and enter upon their duties; and the third class shall hold their offices three years and until their successors are elected and enter upon their duties; and thereafter there shall annually be elected, in the manner hereinbefore specified, four directors of the said corporation, who shall hold their offices three years, and until their successors shall be elected and enter upon their duties. Vacan-
4383 cies which may from any cause occur in said board of directors, may be filled by appointment by the majority of the directors in office; and such appointment shall continue until the next annual election of directors when all vacancies shall be filled by election. The annual election shall be held at the office of the secretary of said company, and the secretary and two disinterested persons, to be appointed by the board of directors, shall be the inspectors of elections, and shall can-

vass the votes, and make and sign a certificate of the result, 4384
and the secertary shall immediately notify the persons elected
of their election.

Sec. 11. The board of directors may, at such times as they may deem necessary or proper, assess upon the stock subscribed an installment of not less than five or more than twenty per cent, and require payment of such installment within a reasonable time, not less than thirty days from notice thereof, under the penalty of a forfeiture of the stock upon which the assessment was made.

Sec. 12. The said corporation shall locate at least thirty
miles of said road between Minneapolis and Saint Cloud, (by 4385
way of Manhattan) and commence work thereon within two years from the time this act shall take effect, and shall complete and equip at least one track from Minneapolis and Saint Cloud, with suitable and safe switches and turn-outs, within seven years from the same time; and the said corporation are hereby authorized and empowered to connect with any railroad running in the same direction with this road, and where there may be any portion of another road which may be used by this company. This company shall not be bound to build such portions of road so long as they may use the por-
tions of any other road which may answer the same purpose. 4386

Sec. 13. For the purpose of constructing and using said railroad, the said corporation is authorized to construct their said railroad and the necessary bridges across and over public highways and navigable streams; provided, that it be so done as not to obstruct the highways, or to materially obstruct or impede the navigation of any navigable stream. And the said corporation is hereby authorized to contract with any other railroad company or corporation with whose road their road may come in contact for the crossing or connection of such roads, and for the joint use thereof. 4387

Sec. 14. If any person shall wilfully obstruct or in any way injure, spoil or destroy the railroad, or any part of the railroad, or anything affixed or appurtenant thereto, and necessary or convenient for its free and safe use, or any of the materials for the construction thereof, or any building, fixture, or other structure, or carriage, engine, or car, erected or kept for the use thereof, such person shall be deemed guilty

of a misdemeanor, and liable to be indicted and punished therefor in the territorial prison, for not more than ten years and for not less than five years, and shall also be liable to pay the company twice the amount of the damage occasioned thereby. And in case the death of any person shall be produced by or in consequence of any wilful or malicious obstruction or injury to the said railroad, or to any engine or car thereon, the person who shall so obstruct or injure the said railroad, or car or engine thereon, shall be deemed guilty of murder in the second degree.

Sec. 15. Every conductor, baggage master, or other agent or servant of the said company, and who shall be engaged in the ticket office, or on the cars on said railroad, shall wear upon his hat or cap a plain badge, which shall indicate his office or station; and no conductor or collector shall demand or be entitled to receive any fare or toll from any freighter or passenger, or exercise any control or direction in his station, or to be authorized or allowed to interfere with any passenger, baggage or freight, without wearing such badge.

Sec. 16. Every locomotive engine on said railroad shall be furnished with a good and sufficient alarm bell or whistle, and be fully sounded at least eighty rods distant from every highway crossing, while the engine, either with or without a train of cars, shall be passing over said road; and for every violation of this section the said company shall forfeit and pay to whomsoever shall prosecute for the same the sum of one hundred dollars.

Sec. 17. This act is hereby declared to be a public act, and may be amended by any subsequent legislative assembly, in any manner not destroying or impairing the vested rights of said corporation.

Sec. 18. This act shall take effect immediately after its passage.

CHARLES GARDNER,
Speaker of the House of Representatives.
JOHN B. BRISBIN,
President of the Council.

Approved March 1, 1856.

CHAPTER V.

Laws of 1864.

AN ACT to Amend an Act Entitled "An Act to Incorporate the Minneapolis and St. Cloud Railroad Company," Passed March 1, 1856.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. That the first section of said act to-wit: An act 4393
to incorporate the Minneapolis and St. Cloud Railroad Company, be and the same is hereby amended, so as to read as follows:

That E. M. Toby, Francis Morrison, B. B. Meeker, H. C. Burbank, J. P. Wilson, O. S. Freeman, H. C. Waite, R. C. Corbett, Charles A. Gilman, R. M. Richardson, J. J. Porter and Henry Hill, their assigns or survivors, and all such persons as shall hereafter become stockholders in the company hereby incorporated, shall be and are hereby made a body corporate, by the name and style of the Minneapolis and St. Cloud Railroad 4394
Company, and by and under that name and style shall be capable of suing and being sued, impleading and being impleaded, defending and being defended, in any and all courts of law and equity as fully as natural persons; and the said corporation may make and use a common seal, alter and renew the same at pleasure, and by their corporate name and style shall be capable of contracting and being contracted with, and of acquiring by purchase, gift, grant or otherwise, and of holding and conveying all such estate and property, real or personal, as may be necessary or convenient to carry into effect the object and purposes of this act, and of the said cor- 4395
poration.

Sec. 2. That the second section of said act, to which this is an amendment, shall be and read as follows: The said corporation is hereby authorized and empowered to survey, locate, construct, complete, maintain, use and operate a railroad from Minneapolis to St. Cloud, and from St. Cloud to the navigable waters of Lake Superior, with all necessary

and proper stations, depots, turn-outs, engines, cars and other appurtenances and furniture of a railroad. The said corporation are also authorized and empowered to survey, locate, build and operate a branch railroad from St. Cloud to some point on the Minnesota river, between township ranges twenty-five and thirty-one, west of the fifth principal meridian, with like privileges for stations, depots, turn-outs, engines, cars, and the usual furniture of a first-class railroad.

Sec. 3. That section twelve of the said act to which this is an amendment, be repealed, and in the place thereof it is enacted:

That said E. M. Toby, Francis Morrison, B. B. Meeker, H. C. Burbank, J. P. Wilson, O. S. Freeman, H. C. Waite, R. C. Corbett, Charles A. Gilman, R. M. Richardson, J. J. Porter and Henry Hill, their assigns, survivors and each of them, be and are hereby declared directors of said company or corporation, for the term of one year from the passage of this act, and until one hundred thousand dollars stock is subscribed and taken, when the stockholders shall choose a new directory, who shall organize in the manner and for the purpose set forth in the tenth section of the act herein amended. And the said directors first above named shall choose a president, vice-president, secretary, treasurer, whose powers, duties and manner of proceeding shall be in conformity to said tenth section of said amended act, till they are superseded by the directors to be chosen by the stockholders, as required by this section. Provided, that they accept this charter as amended, by organizing for the purpose of executing and carrying the same into effect within six months from the passage of this act.

Sec. 4. And be it further enacted, that the said "act to incorporate the Minneapolis and St. Cloud Railroad Company," is hereby declared to be in full force and effect, except so far as the same is repealed or modified by this act.

Approved February 23, 1864.

4400

CHAPTER III.

Laws of 1865.

AN ACT Granting Swamp Lands to Aid the Minneapolis and St. Cloud Railroad Company in Building Branches to Connect with the Lake Superior and Mississippi Railroad and the Winona & St. Peter Railroad, or any other Railroad in Southern Minnesota.

4401

Be it enacted by the Legislature of the State of Minnesota:

Section 1. That there be and are hereby granted to the Minneapolis and St. Cloud Railroad Company, incorporated by and organized under an act of the legislature of the late territory of Minnesota, approved March 1, 1856, to aid said company in the construction of a branch railroad from St. Cloud to connect with the Lake Superior and Mississippi Railroad (or any other road connecting with the waters of Lake Superior) at some point between Chengwatana and the head of said Lake Superior, to be determined by said company, all the swamp lands belonging to or that may hereafter belong 4402
to the State of Minnesota, which have not been otherwise appropriated in the sections designated by odd numbers and lying within the several counties through or into which said branch road may run, not exceeding four sections per mile of said branch road, upon the terms and conditions hereinafter specified.

Sec. 2. That to aid said company in constructing a branch road from said St. Cloud to connect with the Winona and St. Peter Railroad, or any other railroad running in Southern Minnesota from east to west, and to strike the Minnesota river at St. Peter or some point between St. Peter and the 4403
mouth of Redwood river, there be and are hereby granted to said company all the swamp lands belonging to or that may hereafter belong to said state in the sections designated by odd numbers, and lying within the counties through or into which said branch road may run, not exceeding four sections per mile of said branch road, upon the terms and conditions hereinafter specified.

4404 Sec. 3. And if upon the completion of either of said branch roads it shall be found that there shall not be an amount of odd numbered sections of said swamp lands, within the counties through or into which said branch road may pass, equal to four full sections per mile of said branch roads, then the said company shall have the right to and may select from the swamp lands then belonging to said state, and within the several land districts through or into which said branch roads shall pass, other swamp lands designated by odd numbers equal to such deficiency, and the lands so selected by said com-
4405 pany shall be certified and conveyed to said company by the governor of the state.

Sec. 4. And be it further enacted, that whenever, and as often as either of said branch roads shall be continuously graded and ready for the ties throughout, all of that portion thereof lying in any one or more of the counties through or into which the same may pass, it shall be the duty of the governor to execute on behalf of the state a deed of conveyance to said company of the swamp lands designated as aforesaid, and lying within the said county or counties, and to be selected by said company, equal to two sections per mile of the
4406 road so graded, and whenever, and as often as either of said roads is so far completed through any one or more of the counties through which it may pass, as to be ready for the rolling stock, in the judgment of a competent engineer whom the governor shall appoint to report thereon, it shall be the duty of the governor aforesaid to execute a deed of conveyance on behalf of the state to said company for two additional sections of said swamp lands in said county or counties for each mile of the road so finished. And whenever either of said branch roads shall be ready for the rolling stock throughout its entire length, it shall be the duty of the governor so
4407 to deed and convey to said company all the swamp lands designated as aforesaid, in the counties and land districts aforesaid, not exceeding four sections per mile of said branch road. Provided, always, That this act shall not be construed to interfere with the vested rights previously acquired by any other company under the laws of this state or the United States, or with grants for school or other purposes by congress. Provided, that if said company shall not within five

years construct and equip for business with the cars running 4408
thereon, at least ten miles of said road or either of its branches, and the residue within seven years from the passage of this act, then and in that case all the lands hereby granted, pertaining to the unbuilt portions of said road, or either of its branches shall be forfeited to the state, except such as are by this act granted to said company for and upon the grading of its line or lines or portions thereof, as herein provided, which last mentioned lands shall revert to the state, unless the grading is done within the time hereinbefore mentioned for the completion of said road. And provided further, that 4409
this grant shall not prejudice or apply to any grant heretofore made to the Southern Minnesota Railroad Company. And provided always, that this act shall not be construed to interfere with the vested rights previously acquired by any other company under any laws of this state, or the United States, or with grants for schools, asylums or other charitable purposes made by congress or the state legislature.

Sec. 5. This act shall take effect and be in force from and after its passage.

Approved February 11, 1865.

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CHAPTER IV.

Laws of 1865.

AN ACT to Amend an Act Entitled "An Act to Incorporate the Minneapolis and St. Cloud Railroad Company," approved March 1, 1856, and to Repeal Certain Portions of an Act Amending the Charter of Said Company, Passed February 23, 1864.

Be it enacted by the Legislature of the State of Minnesota: 4411

Section 1. That, whereas, the incorporators or persons named in the first section of the act of the legislature of the late territory of Minnesota, entitled "An act to incorporate the Minneapolis and St. Cloud Railroad Company, and approved March 1, 1856," did, in the manner prescribed by said act, open books and receive subscription to the capital stock

of said railroad company to an amount exceeding one hundred thousand dollars, upon which said stock so subscribed, the amount or sum of two per cent was actually paid in on or before the 15th day of March, 1857. And, whereas, the said stockholders of said company have ever preserved and maintained the status given to them by their said several subscriptions and payments, (no further assessments having been made on the said stock), and, whereas, the holders of said stock have since organized said company by the election of a board of directors, and the other officers named in said act, in the manner, therein pointed out, and have received additional subscriptions to the capital stock of said company, upon all of which, two per cent thereof has been actually paid into the treasury of said company, and said company is and ever has been desirous of availing themselves of all the franchises granted by said act. And, whereas, without the consent of said stockholders, or said company, the legislature of the State of Minnesota, by an act approved February 23, 1864, and entitled "An act to amend an act entitled 'an act to incorporate the Minneapolis and St. Cloud Railroad Company,' passed March 1, 1856," did undertake to amend said first mentioned act by inserting as corporators persons other than those named as corporators in said first mentioned or original act, and other than the stockholders aforesaid; and did, also, in said amendatory act, in like manner, declare the said persons named therein, their assigns, survivors, and each of them, directors of said Minneapolis and St. Cloud Railroad Company, or said corporation, for the term of one year from the passage of said amendatory act, and until one hundred thousand dollars stock should be subscribed and taken, when the holders of the stock so subscribed and taken were directed to choose a new directory, and to organize in the manner set forth in said original act, and also directing said persons therein named as such directors to choose all the other officers pertaining to said company, and empowering them to act as such until superceded by the directors chosen by the said stockholders, with a proviso, however, that the said persons named in said amendatory act should accept the charter as thus amended, by organizing for the purpose of executing and carrying the

same into effect within six months from the passage thereof; 4416
and, whereas, no stock has been ever subscribed to the capital stock of said railroad company under or pursuant to, or by virtue of said amendatory act. Therefore, the first and third sections of said amendatory act are, and each of them is hereby repealed, and all power or authority conferred or attempted to be conferred by said sections or either of them, as against the incorporators, or persons named in the act thereby amended, or their associates, successors, or the organization in this act first named, is hereby revoked and annulled.

Sec. 2. The first section of said act, entitled "An act to 4417
incorporate the Minneapolis & St. Cloud Railroad Company," passed March 1, 1856, is hereby re-enacted the same as if it was here repeated at length; but the re-enactment thereof shall not in any manner injuriously affect the organization of said company first mentioned and referred to in this act, which said organization of said company is hereby in all respects legalized and confirmed, and declared to be the only legal representative of said company or corporation, and shall be recognized and treated as such in all courts or tribunals in this state or elsewhere; and the several directors and officers thereof, of said or 4418
ganization, and their successors, shall, whenever it shall or may become necessary or important to the interests of said company, be deemed the successors of the persons named as directors in said amendatory act, and of each and every of the officers by said persons chosen under the provisions of said amendatory act. Provided, that no provision in this act or the act to which this act is an amendment shall be so construed as to interfere with the rights, privileges and franchises of any other land grant railroad company in this state existing at the time of the passage of this act or of the act to which this is an amendment. 4419

Sec. 3. That the twelfth section of the said act, entitled "An act to incorporate the Minneapolis & St. Cloud Railroad Company," approved March 1, 1856, is hereby re-enacted and amended so as to read as follows:

"Sec. 12. The said corporation is hereby authorized and empowered to connect with or adopt as its own, on such terms as may be agreed upon, between the parties or companies in-

terested, any other railroad running in the same general direction with either of its main lines, or any branch road which said corporation is authorized to construct, and where there may be any portion of another railroad which may be so used by this company or corporation, it shall not be bound to build such portion of its own road or branches, so long as it may use the portion of any other road which may answer the same purpose."

Sec. 4. That section two of said charter or incorporating act is hereby amended by striking out the words "by way of Mille Lac," where they occur in said section.

Sec. 5. That section ten of said act, incorporating said company, is hereby amended by adding thereto the following:

The said board of directors shall have power at any meeting thereof, upon the written request of the holders of a majority of the stock, to increase or diminish the number of directors thereiu; provided, however, that any change so made shall equally effect each class of directors herein provided for; and, in case the number is at any time reduced by virtue hereof, that the director or directors who shall go out of office, shall, unless otherwise agreed upon, be determined by lot, by the directors belonging to either class, if they shall be present, and if any one or more shall be absent, the presiding officer at said meeting may appoint some stockholder to act for such absent director. A majority of the directors of the board, after any such change, shall constitute a quorum for the transaction of business.

Sec. 6. The said Minneapolis & St. Cloud Railroad Company shall also have power in such manner as may be provided by resolution of its board of directors to open books and receive subscriptions for stock pertaining solely to any one or more of its main lines, or branch roads, or to any portion of either, in any amount necessary and within the limits prescribed by its charter, and to provide for issuing certificates therefor; and whenever fifty thousand dollars of stock shall be so subscribed, the said stockholders may meet in person or by proxy, at such time and place as said company shall have prescribed, or a majority of the holders of said stock may prescribe, and proceed to elect a sub-board of directors, not exceeding nine nor less than five in number, each

share of said stock being entitled to one vote by the holder 4424
thereof, which shall be cast in person or by written proxy. The said sub-directors shall elect one of their number to be president of said sub-board of directors, and he shall preside at all the meetings thereof at which he shall be present. The said directors shall also elect one of their number vice-president of said sub-board, who shall preside in the absence of the president. They shall also elect some suitable person to be secretary, and some suitable person to be treasurer, who shall give such security for the payment of the moneys entrusted to him as such officer, as the directors may from time 4425
to time require. A majority of said sub-directors shall form a quorum for the transaction of business. All the affairs of the said Minneapolis and St. Cloud Railroad Company, pertaining to the line or branch, for the construction of which said stock may be subscribed as aforesaid, shall be conducted by or under the direction of said sub-board of directors, and their successors in office, after the organization of said sub-board; and the said sub-board are hereby authorized for the purposes in this section specified to make and establish regulations and by-laws for their government, and the government of the line or branch to which their said stock may pertain as 4426
aforesaid, and shall have and may exercise all the powers over said line or branch which the board of directors of the said Minneapolis and St. Cloud Railroad Company could have exercised over the same had such sub-board of directors not been organized; and may do all things necessary to be done in the premises, not inconsistent with the laws of the state or the charter of said company or of this act. The number of sub-directors which shall constitute said sub-board after the first organization, their terms of office, the term of office of each of the other officers herein provided for, and the manner of filling vacancies, shall be regulated by the stockholders, and 4427
their compensation by said sub-board. From and after the organization of such sub-board of directors, all the rights, privileges, franchises and immunities granted by this or any other act of the legislature of the state or territory, to said Minneapolis and St. Cloud Railroad Company pertaining to the line or branch for which said sub-board of directors may be organized, as aforesaid, and all right, title, interest or

claim of said company in and to all lands granted by any act of the legislature and also pertaining to said line or branch, shall vest in said sub-board of directors for the use and benefit of the stockholders represented by said sub-board; but the said Minneapolis and St. Cloud Railroad Company shall remain vested with all its other rights, powers, privileges, franchises, lands and other property. The said sub-board may adopt by resolution any name which may designate the particular line or branch of road which they may propose to construct, and by and under such name the stockholders in said line or branch shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against in law or equity, in any and all courts or tribunals as fully as natural persons; and may make and use a common seal, and alter and renew the same at pleasure, and by said name and style shall be capable of contracting and being contracted with, and of acquiring by purchase, gift, grant or otherwise, and of holding and conveying all such estate and property, real and personal, as may be necessary or convenient to carry into effect the object and purposes of this section and of the said Minneapolis and St. Cloud Railroad Company, so far as may concern said line or branch. And neither the stockholders mentioned in this section, nor the line, road or branch which they may construct by virtue hereof, shall be liable for any debt or liability contracted by said Minneapolis and St. Cloud Railroad Company, after the organization of said sub-board of directors, or said sub-company; nor shall any of said stockholders be liable on stock subscribed or held by them for debts, or liabilities incurred after he shall have transferred the same; nor shall said Minneapolis and St. Cloud Railroad Company be held to answer for any debt, demand or liability incurred by or under the management of any sub-board of directors authorized by this section, except it should become a stockholder therein, and then only to the same extent as other stockholders in said line or branch.

Sec. 7. That any association of persons, corporation or alleged corporation, to whom or to which any legislature of the state or late territory of Minnesota, have granted or shall grant any swamp lands, or the right, title, interest or claim of the state or said territory in or to any lands donated by the

congress of the United States to the said territory or state 4432
to aid in the construction of any railroad or line of railroad where or over a route which the said Minneapolis and St. Cloud Railroad Company is authorized by its charter to build and construct, either a main line or branch railroad may, and is hereby authorized, by deed authorized by a vote of the board of directors of such association, company or corporation, duly signed by the president and sealed with the corporate seal thereof, if such association, company or corporation shall have adopted a seal to surrender or transfer to said Minneapolis and St. Cloud Rail- 4433
road Company, or to any branch or line thereof then having a separate organization, or sub-board of directors, as provided by this act, all the right, title, interest and claim of such association, company or corporation to any or all lands so granted and applicable or pertaining to said line or branch road, or to any part thereof. And the said Minneapolis and St. Cloud Railroad Company, and each line or branch thereof having a separate organization as in this act provided, are, and each of them is hereby made capable of accepting and receiving such surrender or transfer of any such grant of lands, or the interest of the territory or state therein, and of acquiring title to 4434
said lands upon the same terms and conditions as were or may be imposed on the original grantees or association, company or corporation so surrendering such grant, lands or interest, except that the time or times which may be limited by such original grant for grading or completing the road or line to which said grant may apply, shall commence to run from the date of the said surrender or transfer. And the governor of the state is hereby authorized and required after such surrender, when notification thereof is filed in the office of the secretary of state, to deal in all things concerning said grant with said Minneapolis and St. Cloud Rail- 4435
road Company, or the line or branch thereof to whom or to which said surrender shall be made as aforesaid; and to that end he is hereby authorized and required upon proper written demand, to convey from time to time directly to said company, or the separate line or branch thereof entitled thereto, all the lands embraced in said grant and surrender to which said company, line or branch may become entitled by virtue

4436 hereof, and of said original grant, the same as he may have been authorized to convey to said original grantee or grantees, had such surrender not been made.

Sec. 8. The said the Minneapolis & St. Cloud Railroad Company, and each of its branches being organized as aforesaid, shall have power to consolidate the whole or any portion of its capital stock with the capital stock or any portion thereof, of the road or branch road of any other railroad corporation or company, having the same general direction or location, or to become merged therein, by way of substitution, upon such terms or conditions as
4437 the two companies may agree, by the consent of a majority of the stockholders of each company, and the two companies when such consolidation has been made, shall control and manage by the board of directors of both companies acting jointly, such consolidated road, until the first election of directors of said consolidating companies, when the stockholders of said companies shall choose at such time and place as they shall agree upon, a board of directors not to exceed eleven in number, who shall have power to adopt a name for such consolidated road, and by which they shall be
4438 known and recognized; to adopt a common seal; to sue and be sued; contract and be contracted with; and shall have and enjoy all and singular the rights, right of way, privileges and immunities of said consolidating companies or either of them, as to such consolidated line before consolidation, which said agreement of consolidation shall be in writing, signed by the president of said consolidating companies respectively, and a copy thereof filed in the office of the secretary of state.

Sec. 9. The said Minneapolis & St. Cloud Railroad Company may consolidate any portion of its road and property, and each branch being organized as aforesaid, may consoli-
4439 date the whole or any portion of its branch road and property, with the franchises of any other railroad company or any portion thereof, upon such terms and conditions as said companies, or a majority of the directors thereof, with the consent of the holders of a majority of the stock, respectively, may agree:

Provided, that said consolidated road shall not be affected by or subject to any liens, judgments, deed of trust or mort-

gage, created upon or growing out of any subsequent agree- 4440
ments, liabilities or transactions connected with any other portion of said Minneapolis & St. Cloud Railroad, or of the road or branch with which it may be so consolidated.

Sec. 10. The Minneapolis & St. Cloud Railroad Company, and each of its branches organized as herein provided, shall have power to create and issue in such manner and on such terms as it may deem expedient, one or more classes of preferred stock and special stock, and to make such agreements as it may deem proper with the respective holders thereof as to the dividends thereon, and the securities for such divi-
dends, and to make such agreements as it may deem proper 4441
with the holders of any special or preferred stock for the appropriation of the net earnings of any portion of the railroad which it may construct or otherwise acquire, to the payment of dividends on such stock as may be issued in respect thereto, which appropriation, as made by such agreement shall be effectual to secure to the said and future holders of such stock the application of such net earnings as in the said agreement provided, against any future act of the company or branch or any of its general liabilities. And the said company or branches may make such agreement as it may deem
proper with the holders of any such special stock as to the 4442
administration of the portion of said railroad and any land grant appertaining thereto to which said stock may pertain and for the separate organization of the holders of such special stock for the purpose of that administration and enabling them or directors chosen by them separately or in conjunction with the other directors, to exercise in respect to the portion of the road to which such special stock may pertain all the powers of the company subject to the provisions of such agreement when made and entered into.

Sec. 11. The Minneapolis & St Cloud Railroad Company, 4443
and each of its branches so organized, shall have power to provide in any mortgage or deed of trust which it may issue covering any portion of its road now built, or hereafter to be built, that the holders of the bonds, secured by such deeds of trust or mortgage, shall have the right to vote at any meetings held for the election of directors of said company or branch or for any other purpose, and such voting power to be to such extent as may be provided for, either in such deed of

4444 trust or mortgage, or in the bonds issued by said company. And all meetings both of directors or stockholders of said company or branch, may be held either within or without the state of Minnesota, or any of the United States, in the city of London, England, or any foreign state or country, as shall be provided for by the by-laws of said company or branch, and all or any of the directors may be residents of the city of London aforesaid, or of any foreign country.

Sec. 12. The Minneapolis & St. Cloud Railroad Company, and each branch thereof having a separate organization as above provided for, may consolidate the whole or any portion
4445 of its main lines or branch railroads, and all the property, rights, powers, franchises, grants and effects pertaining to such roads with the rights, powers, franchises, grants and effects of any other railroad company either within or without this state, upon such terms and conditions as such company or branch organization, or a majority of the directors thereof may respectively agree, and the railroad company in which such railroad shall become vested by such consolidation, shall thereafter hold and enjoy all rights, grants and powers and franchises in respect to such with the company or
4446 branch possessed before the consolidation, but the said Minneapolis & St. Cloud Railroad Company or branch organization thereof shall remain vested with all its other rights, powers, privileges and franchises.

Sec. 13. This act shall take effect from and after its passage.

Approved February 28, 1865.

CHAPTER LVI.

Laws of 1869.

4447 AN ACT to Amend an Act Entitled "An Act Granting Swamp Lands to Aid the Minneapolis and St. Cloud Railroad Company in Building Branches to Connect with the Lake Superior and Mississippi Railroad and the Winona and St. Peter Railroad, or Any Other Railroad in Southern Minnesota."

Be it enacted by the Legislature of the State of Minnesota:

That section one of the said act be amended so as to read as follows:

Section 1. That there be, and there hereby are granted to 4448
the Minneapolis and St. Cloud Railroad Company, incorporated by, and organized under an act of the legislature of the late territory of Minnesota, approved March 1, 1856, to aid the said company in the construction of a branch railroad from St. Cloud to connect with the Lake Superior and Mississippi Railroad (or any other road connecting with the waters of Lake Superior) at some point between Snake river and the head of Lake Superior to be determined by the said company, an amount of swamp lands belonging to, or that may hereafter belong to the state of Minnesota not otherwise 4449
granted, equal to ten (10) full sections for each mile of the said road; provided that this grant of lands shall not prejudice or affect the rights of any other railroad company, any asylum, charitable institutions, or school to any lands heretofore granted.

Sec. 2. Whenever any ten consecutive miles of the said railroad shall be completed and ready for the rolling stock, it shall be the duty of the governor to execute on behalf of the state, a deed of conveyance to the said company, the full quota of said lands for the portion of said road so completed, provided, that if the said company shall not construct and 4450
equip for business, with cars running thereon, at least ten miles of the said road, within three years from the first day of December, A. D. 1869, and the residue within six years from the last date aforesaid, then and in that case, all the lands hereby granted, pertaining to the unbuilt portion of the said road shall be forfeited to the state.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved March 5, 1869.

CHAPTER LIII. 4451

Laws of 1869.

AN ACT to Amend the Charter of the Minneapolis and St. Cloud Railroad Company.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. That the name of the Minneapolis and St. Cloud Railroad Company, and that of any of its branches, or any

4452 division or portion of its roads, subject to the control of said company, may be changed by a resolution of the board of directors of said company, to any other name or names; and upon filing a duly authenticated copy of such resolution in the office of the secretary of state, the said company, or branch, division or portion of said road shall be known by the name or names respectively adopted and designated in such resolution, and the stockholders may, by resolution, increase their directors to any number not exceeding fifteen, or decrease the number to seven.

4453 Sec. 2. The times limited for the grading and completing the respective portions of said road, is hereby extended for the period of four years.

Sec. 3. Whenever there shall be a vacancy in the board of directors, by resignation or from any other cause, the vacancies shall be filled for the unexpired term by the president and secretary of said company.

Sec. 4. The said Minneapolis and St. Cloud Railroad Company are hereby authorized to survey, construct, operate and maintain, under the provisions and restrictions of their charter, a branch road from St. Cloud up the Sauk valley to some 4454 point upon the St. Paul and Pacific railroad, or to some point on the Red River of the North, by the way of Alexandria, and all the rights, franchises, privileges and immunities heretofore granted to said company, upon the main line or any branch thereof shall apply to said branch road, as fully to all intents and purposes, as the rights and privileges heretofore granted to said company.

Sec. 5. This act shall take effect and be in force from and after its passage.

Approved March 6, 1869.

4455 CHAPTER LII.

Laws of 1870.

AN ACT to Amend the Charter of the Minneapolis and St. Cloud Railroad Company.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. That in consideration of an annual payment of a per centum upon the gross earnings of the Minneapolis and

St. Cloud Railroad as herein provided, the road, its appurte- 4456
nances and appendages, and all other property, estate and effects of the Minneapolis and St. Cloud Railroad Company, which they have already acquired or which they may hereafter acquire, purchase, hold, possess, enjoy, or use, for, in or about the construction, equipment, renewal, repair, maintaining or operating its railroad, as also the stock and capital of said company, shall be and hereby are forever exempt from all assessments and taxation; and in consideration of the grants made to and privileges and franchises conferred upon said company, and of the exemption contained in this section, the 4457
said company shall, during the first three years after thirty miles of said railroad shall be completed and in operation, on or before the first day of March of each and every year, pay into the treasury of the state one per cent on the gross earnings of said railroad, the first payment to be made on the first day of March next after the said railroad shall be completed and in operation, and shall, during the seven years next ensuing after the expiration of the three years aforesaid, pay into the treasury of this state on or before the first day of March of each and every year, two per cent on the gross earnings of said railroad; and shall, from and after the expiration 4458
of ten years from the completion of thirty miles of said railroad, on or before the first day of March of each and every year, pay into the treasury of this state three per cent of the gross earnings of said railroad. And the payment of such per centum annually as aforesaid, shall be and is in full of all taxation and assessment whatever. And for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this state on or before the first day of February in each year, the truth of which abstracts shall 4459
be verified by affidavits of the secretary and treasurer of said company; and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstract, full power is hereby vested in the governor of this state or any other person appointed by law to examine under oath the officers and employes of said company or other persons and if any person so examined by the governor or other authorized

4460 person, shall knowingly or willingly swear falsely concerning the matter aforesaid, every such person is declared to have committed perjury. And for securing to the state the payment of the aforesaid per centum, it is hereby declared that the state shall have a lien upon the railroad of said company and upon all the property, estate and effects of said company whatever, real, personal or mixed, and the lien hereby secured to the state shall take and have precedence of all demands, decrees and judgments against said company.

Sec. 2. The provisions of the foregoing section are hereby extended to the said Minneapolis and St. Cloud Railroad and
4461 all its branches.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved March 2, 1870.

CHAPTER CCCXXV.

Laws of 1879.

4462 AN ACT to Extend the Time for the Construction and Completion of a Branch of the Minneapolis and St. Cloud Railroad.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. That the time for the construction, completion and equipment of that branch of the Minneapolis & St. Cloud Railroad from St. Cloud, to connect with the Winona and St. Peter Railroad, or any other railroad running in Southern Minnesota from east to west, and to strike the Min-
4463 nesota river at St. Peter or some point between St. Peter and the mouth of Redwood river, being the same branch road mentioned and referred to in section two of chapter three, of the special laws of the year 1865, approved February 11, 1865, be and the same is hereby extended until the 25th day of December, 1885, and all the rights, privileges, franchises and immunities heretofore granted to the Minneapolis and St. Cloud Railroad Company are hereby continued and extended

until the said 25th day of December, A. D. 1885. And if the 4464
said branch road shall at the date last aforesaid be fully completed and equipped, then and in such case the said rights, privileges, franchises and immunities shall continue and be perpetual, as is in and by the original act of incorporation of said railway company and the acts amendatory thereof provided.

Sec. 2. This act shall not take effect or be in force until a consolidation shall have been perfected in the manner prescribed in chapter four of the special laws of the year 1865, approved February 28, 1865, of the capital stock representing 4465
and controlling the said branch road, with the capital stock of the Mankato and St. Cloud Railroad Company, now organized or being organized as a corporation under General Statutes of this state by articles of incorporation bearing date on the 20th day of February, A. D. 1879; and from and after such consolidation this act shall take effect and be in force.

Approved March 11, 1879.

CHAPTER 123.

4466

Laws of 1881.

AN ACT to Amend Chapter Fifty-six (56) of the Special Laws of 1869, Page 249, Entitled "An Act to Amend an Act Entitled An Act Granting Swamp Lands to Aid the Minneapolis & St. Cloud Railroad Company in Building Branches to Connect with the Lake Superior & Mississippi Railroad and the Winona and St. Peter Railroad or Any Other Railroad in Southern Minnesota."

Be it enacted by the Legislature of the State of Minnesota: 4467

Section 1. That section one (1) of chapter fifty-six (56) of the special laws of A. D. 1869, entitled "an act to amend an act entitled an act granting swamp lands to aid the Minneapolis & St. Cloud Railroad Company in building branches to connect with the Lake Superior & Mississippi Railroad and the Winona & St. Peter Railroad, or any other railroad in

4468 Southern Minnesota," be and the same is hereby amended so as to allow and authorize said Minneapolis & St. Cloud Railroad Company, under the provisions of its charter, and the amendments thereto, and of said act to which this is amendatory, to construct and operate its said branch in said section mentioned, so as to connect with any other railroad at Wyoming or any point north thereof.

Sec. 2. All acts and parts of acts inconsistent with this act are hereby repealed.

Sec. 3. This act shall take effect and be in force from and
4469 after its passage.

Approved March 7, 1881.

CHAPTER 81.

Laws of 1885.

AN ACT to Amend an Act Entitled "An Act Granting Swamp Lands to Aid the Minneapolis and St. Cloud Railroad Company in Building Branches to Connect with the Lake Su-
4470 perior and Mississippi Railroad and the Winona and St. Peter Railroad, or Any Other Railroad in Southern Minnesota," Approved February 11, A. D. 1865, as Amended.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Section two (2) of the act mentioned in the title hereof, being chapter three (3) of the special laws of 1865, as amended by section one (1) of chapter sixty-five (65) of the special laws of 1881, special session, is hereby amended so as to read as follows:

4471 Sec. 2. That to aid said company, its successors or assigns, in constructing a branch road from St. Cloud to the Southern Minnesota railroad, so-called, to run by the way of the villages of Litchfield and Hutchinson and the city of Mankato and the city of Austin, there be and are hereby granted to said company, its successors or assigns, all the swamp lands belonging to, or that may hereafter belong to the state of Minnesota, in the sections designated by odd numbers and lying

within the counties through or into which said branch road 4472
may run, not exceeding four (4) sections per mile of all that part of said branch railroad extending from St. Cloud to the Southern Minnesota railroad, so-called, upon the terms and conditions hereinafter specified in sections two (2) and three (3) of said chapter three (3) of said special laws of 1865, as amended by section two (2) of chapter sixty-five (65) of the special laws of 1881, and the said act is hereby further amended by inserting the words "its successors or assigns," after the word "company," wherever said word occurs in said section. 4473

Sec. 3. That whenever the St. Cloud, Mankato and Austin Railroad Company, its successors or assigns, shall, before December 25, A. D. 1887, to which time the swamp land grant of said company is hereby extended, construct and equip for the transportation of freight and passengers any one (1) or more sections of twenty (20) continuous miles of any part of that branch of the Minneapolis and St. Cloud Railroad, now known as the St. Cloud, Mankato and Austin Railroad, substantially upon the survey made via the villages of Litchfield and Hutchinson by said company, then and in such case the governor shall certify and convey to said company, its successors or 4474
assigns, eighty (80) sections of the swamp lands heretofore granted for the contruction of said road, and so on as often as any further continuous sections of ten (10) miles as extensions thereof shall be so completed and equipped, then the governor shall in like manner certify and convey to said company, its successors or assigns, a further quantity of forty (40) sections of the swamp lands granted as aforesaid, until the full completion of said road, provided, that this act shall not operate to affect any lands not heretofore granted.

Sec. 4. This act shall take effect and be in force from and 4475
after its passage.

Approved March 10, 1885.

We, James J. Hill, president, and Edward Sawyer, secretary of the Minneapolis and St. Cloud Railroad Company hereby certify, that at a meeting of the board of directors of this company, duly held at the office of this company, in the city

of St. Paul, on September 16, 1889, the following resolution was duly adopted by the said board:

"Resolved, that the name of this company be and the same hereby is changed to the 'Great Northern Railway Company.'

"Resolved, further, that the president and secretary of this company file with the secretary of state of the state of Minnesota, a copy of this resolution certified under their hands and the seal of this company."

In testimony whereof, we have hereunto set our hands and affixed the seal of the said company on this 16th day of September, A. D. 1889.

JAS. J. HILL, President.

[Corporate Seal] E. SAWYER, Secretary.

Filed in this office for record Sept. 18th, A. D. 1889, at 4 o'clock p. m.

H. MATTSON,
Secretary of State.

UNITED STATES OF AMERICA,

State of Minnesota, Department of State.

I, P. E. Hanson, secretary of state of the state of Minnesota, do hereby certify that I have compared the annexed copy with the original acts in my office of special laws, being chapter 160, laws of 1856; chapter 5, laws of 1864; chapters 3 and 4, laws of 1865; chapter 56, laws of 1869; chapter 53, laws of 1869; chapter 52, laws of 1870; chapter 325, laws of 1879; chapter 123, laws of 1881; chapter 81, laws of 1885, and resolution of the Minneapolis & St. Cloud Railroad Company, as filed September 18, 1889, and that said copy is a true and correct transcript of said original special acts and resolution, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the great seal of the state at the capitol in St. Paul, this 20th day of Sept., A. D. nineteen hundred and two.

P. E. HANSON,

[Seal] Secretary of State.

The following is a copy of the Acts of the Legislature of 4480
the State of Wisconsin constituting the charter of the Superior & St. Croix Railroad Company (now the Northern Pacific Ry. Co.), together with the statutes amendatory thereof as the same appears on pages 408 to 430 of Vol. 2 of the Record in the case of the United States vs. Northern Securities Co. et al. and here offered by the defendants as original evidence in this case, marked by the Examiner Defendants' Exhibit E:

4481

DEFENDANTS' EXHIBIT E.

CHARTER OF THE NORTHERN PACIFIC RAILWAY COMPANY

(Formerly Superior and St. Croix Railroad Company)

AND LAWS RELATING THERETO.

CHAPTER 326.

4482

(Published April 6, 1870.)

AN ACT to Incorporate the Superior and St. Croix Railroad Company.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. That I. W. Gates, R. G. Coburn, E. W. Anderson, Jr., Hiram Hayes, S. H. Clough, Hiram Robbins, D. W. Maxon, John J. Tallmadge, H. L. Palmer, S. B. Dresser, O. S. 4483
Powell, and such other persons as may be associated with them who shall become stockholders in the association or corporation hereby created, in accordance with the provisions of this act, shall be and they hereby are created a body corporate and politic by the name and style of the Superior and St. Croix Railroad Company, and by that name shall have perpetual succession, be competent to contract and be con-

tracted with, sue and be sued, implead and be impleaded, answer and be answered, defend and be defended in any court whatever. That the corporation may make, have and use a common seal, which it may alter or renew at pleasure; it shall be capable of acquiring by deed, lease or other conveyance, a fee simple or any less estate in lands, tenements or easements in the same, and of conveying any such estate or interest by deed, lease or other conveyance, or of holding such estate or interest, or any other estate necessary for the use of the said railroad, either real, personal or mixed, and shall have and enjoy all the privileges incident to a corporation, and may do and perform all and singular the acts and matters which to any corporation it shall lawfully appertain to do and perform for the well being of said corporation.

Sec. 2. The said company by this act created is hereby authorized and empowered to survey, locate, and from time to time alter, change and relocate (so as not materially to change the route) and to construct and complete, perpetually to have, use and enjoy, maintain and operate the said railroad with one or more tracks or lines, over and along the following routes, that is to say: Beginning at some convenient point on the west shore of the bay of Superior, or on the south shore of the bay of St. Louis, in the county of Douglas, running thence southerly by a route as direct as may be practicable, through the counties of Douglas, Burnett, Polk, St. Croix and Pierce via St. Croix Falls and Hudson to Prescott, with a branch or extension running westerly from the above designated place of beginning in Douglas County to such point on the Minnesota boundary north of the Nemadji river as may be deemed desirable by the directors of said railroad company.

Sec. 3. The company hereby created shall have the perpetual right, power and authority to transport, take and carry property and persons upon said railroad by steam or other power, and to receive and store away any property in any of its depots or other buildings, and to make, construct, maintain and use all such switches, turnouts and sidetracks, as it may deem necessary, and also to construct, erect and maintain all such depots, station houses, warehouses, car houses and shops, engine houses and all other buildings, fixtures and things for the accommodation of said company and its roads,

and those using the same. And said railroad company shall 4488
have power to connect its road with any other railroad, and to operate the same, or to run in connection with any such railroad in such manner as may be agreed upon between the boards of directors of this company and any such railroad. And any railroad company or association having a railroad built or partly built, running in the direction of the line of railroad which the railroad company hereby created is authorized to construct and operate, which this company by this act created shall agree to use or connect with, is hereby authorized to make such lease or sale to this company or cor- 4489
poration, perpetually or for a limited time, of the whole or any part of their railroad so constructed or partly constructed, together with the rolling stock, machinery, buildings, tenements or fixtures, and all other property, real, personal or mixed, of the said company or association, together with its franchises, rights, privileges and immunities, or to sell the same, and in consideration of such lease or sale, to take and receive such rents or payments as may be agreed upon.

Sec. 4. The said company shall have the right, authority and power and it is hereby authorized and empowered to con- 4490
struct its railroad along and upon, across, under and over any public or private highway, roads, streets, plank roads or railroad if the same shall be necessary, but the said company shall put such highway, road, street, plank road or railroad in such condition and state of repair as not to impair or interfere with the free and proper use, and also to erect and maintain all necessary bridges for the use of their railroad over any stream of water or water course at such points of crossing the same as said road may be located, with all necessary abutments, piers, arches and foundations.

Sec. 5. It shall be lawful for the company hereby created, 4491
and it shall have the right, power and authority by its officers, engineers, agents, servants and workmen to enter upon any land for the purpose of exploring, surveying, locating and determining the routes of said railroads; and when the said routes or any portion thereof shall be determined by resolution adopted by its board of directors, it shall be lawful for said company, and it shall have the right, power and author-

4492 ity by its officers, engineers, agents, contractors, surveyors, servants and workmen, at any time, to enter upon, take, possess, occupy and use any land along and including the line of said route, not exceeding one hundred feet in width. It shall also be lawful for said company, and it shall have the right, power and authority, at any time, to enter upon, take, possess, and occupy and use any other lands beyond said limits of one hundred feet, which the directors shall, by resolution adopted by them (a copy of which shall be recorded at the expense of said company in the office of the register of deeds in the
4493 county in which said lands are located), declare to be necessary for the use of said company, for the purposes of erecting depot buildings, station houses, machine shops, freight houses, engine houses, warehouses, or buildings or fixtures of any kind, or ground about the same, for the convenient operation of the road, or for making drains or giving proper direction to water courses, or of directing or changing the channel of water courses, or for the purpose of removing such substances or things as may endanger, obstruct or interfere with the free use of said road, or for the purpose of depositing earth, gravel, stone, timber or other material for embank-
4494 ments, structures or superstructures necessary to the construction, repair or removal of said road. Said company shall, however, at such time and in such manner as is provided by and in this chapter and act, be liable to pay the full value of all earth, gravel, stone, timber and land which may be so as aforesaid taken, possessed, occupied or used for any of the purposes aforesaid, which is the private property of either persons or corporations, which value (unless the owner thereof and said company shall agree as to the same) shall be ascertained and determined in the manner hereinafter provided; and whenever the same shall have been paid, tendered
4495 or deposited as provided in this act, an estate in and to all and every such lands in fee simple absolute forever shall be and become vested in said company by virtue thereof, and of the provisions of this act, and by the same means a complete title shall vest in said company in and to all such earth, gravel, stone and timber; and whenever said company shall deem that such property or any part or portion of such property shall no longer be necessary for the purposes for which

the same were taken, it is hereby authorized and empowered 4496
by deed or other instrument in writing, to lease or sell the same or any part thereof.

Sec. 6. On the completion of said road or any part thereof, it shall be lawful for said company, and it is hereby authorized and empowered to demand and receive such sum or sums of money for the transportation of persons and of property, and for the storage of property, as it shall from time to time deem reasonable.

Sec. 7. Said company hereby created shall also have full power and authority to transport persons and property in 4497
boats, vessels, barges and other water craft on any of the navigable waters which its said railroad or roads run into or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may build or purchase, own and use such boats, vessels, barges and other water craft as it may require.

Sec. 8. The company hereby created shall be capable in law of taking and holding any land granted to it by the government of the United States or of this state, or by individuals or corporations, to aid in the construction of its road, and may also pledge, mortgage and otherwise dispose of all 4498
their rights, title and interest in and to said lands, and in any other estate, real, personal or mixed, of which they may be seized at the time of the execution of such mortgage, or which they may acquire subsequently thereto, in such manner and on such terms as the directors may think proper.

Sec. 9. All the affairs of said company shall be managed by a board of directors, who shall be stockholders, and who are hereby invested with all the powers of the corporation. They shall be chosen annually by ballot, by the stockholders, at the annual meeting of the company, which shall be held on such notice and at such time as shall be prescribed by the 4499
by-laws, and at such place as shall be prescribed by the board of directors and stated in such notice. At all meetings of the stockholders, every stockholder shall be entitled to one vote for each share of stock held by him or her, and may vote in person or by proxy duly authorized; and no business shall be transacted at any meeting of the stockholders, unless a majority of the stock subscribed is represented. In all elec-

4500 tions of directors, those stockholders equal to the number to be elected having the greatest number of votes shall be deemed and declared duly elected. The elections shall be conducted in such manner as shall be prescribed by the by-laws of the company; and if from any cause an election of directors shall not be had at the time when, by the provisions of this act or of the by-laws, it should be had, the same may be held at any other time, on notice to be given as aforesaid; and until such election be had the directors of the preceding year shall continue to act, and the corporation hereby created shall
4501 not forfeit or lose any of its privileges, franchises or immunities for a less period than ten consecutive years. The board may at any time increase or diminish the number of directors to be elected at the next annual meeting of the stockholders, and the number to be elected shall be specified in the notice of election, but shall never be less than five or more than eleven.

Sec. 10. A majority of the board of directors shall constitute a quorum for the transaction of any business. They shall meet at such times and places, and be convened in such manner as they shall decide upon. They shall elect one of their
4502 own number to be president, and one to be vice-president. The president shall, when present, preside at all meetings of the board and of the stockholders, and when absent, the vice-president shall discharge the duties of the president, and when both are absent, the directors may appoint a president *pro tem.* The board of directors shall have power to appoint an executive committee, and prescribe its powers and duties; to appoint a secretary, treasurer and such engineers, superintendents, agents and other officers, as they may deem necessary, and remove them at pleasure; prescribe their duties and compensation, and may demand adequate security for the
4503 discharge of their respective duties and trusts.

Sec. 11. The persons named in the first section shall be the first directors, and shall hold their offices until the first Wednesday of May, A. D. 1871, and until others are chosen in their places, and in case of a vacancy in the directors by reason of the death or resignation of any director, or of his ceasing to be a stockholder, it may be filled by the remaining directors, until the next annual election, or until some other

person shall be elected to fill the same. The directors herein 4504
named may appoint three persons, who shall be stockholders, to be inspectors at the first election, after which the stockholders shall choose three such inspectors at the annual elections. If no inspectors are chosen, the directors may appoint three from time to time. If at any time an election of directors shall not take place on the day appointed by this act, the corporation shall not for that cause be dissolved, but an election may be held on another day, in such manner as shall be prescribed by the directors, or provided for by the by-laws.

Sec. 12. The said company shall have authority and power, 4505
and it is hereby authorized and empowered in its corporate capacity, to borrow any sum of money from any person or persons, corporation or body politic of any kind, and may make, execute and deliver all necessary writings, notes, bonds, mortgages and other papers and securities in amount and kind, as may be deemed expedient by said corporation in consideration of any such loan, or in the discharge of any liabilities it may incur in the construction, repair equipment or running of said road; and the powers of said corporation for the purposes aforesaid, and for all purposes necessary to car- 4506
rying out the objects of said company, viz., the construction of a railroad from and to the points aforesaid, are hereby ratified and confirmed, and the contracts and official acts of said company declared binding in law and equity upon said corporation and upon all other parties to said contracts. Said company shall also have authority and power, and is hereby authorized and empowered in its corporate capacity to make, execute, issue and deliver its bonds and obligations from time to time, and at any time, in such an amount that all the bonds of the company outstanding at any one time will not exceed the amount of the capital stock of said company. The direc- 4507
tors of said company are hereby authorized and empowered to prescribe by resolution to be by them adopted, the sum or sums for which each of said bonds shall be issued, the time or times and place or places when and where the principal and interest of the same shall be payable, and whether payable to order or to bearer, or how otherwise negotiable, the rate of interest which such bonds shall bear and the manner and form

in which the interest coupons annexed to them shall be executed; and to secure the payment of any and all such bonds, the said corporation is hereby authorized and empowered, in its corporate capacity, to make, execute and deliver a mortgage or deed of trust upon the whole or any part of its railroad, constructed or authorized to be constructed, and of any or all of its estate, real, personal or mixed, in possession or expectancy, owned and acquired, or to be thereafter owned and acquired by said corporation; and the said company is also hereby authorized and empowered, in and by such mortgage or deed of trust to confer upon the trustees or mortgagees, full and ample powers to enter into and upon, and to take possession of, have, use and enjoy, or to sell and dispose of the whole or any part of said railroad or its estate, together with the functions appertaining to said railroad, and all corporate and other franchises, rights and privileges of said corporation; and the directors of said company are hereby authorized and empowered to prescribe by resolutions to be adopted by them, all matters relating to the forms and terms of any such mortgage or deed of trust, and of its execution and delivery; and they are authorized to provide for the periodical payments to such trustee or receiver as they shall appoint, a certain sum to create a sinking fund, with which to pay off or discharge at or before maturity any or all of the bonds by them authorized to be issued; and also to provide the manner in which such trustee or receiver shall pay out or dispose of said sinking fund, and to authorize him to designate by lot or in any other suitable manner, the bond or bonds to the payment of which such sinking fund or any part of it shall be applied, and the said board of directors are hereby authorized and empowered to sell, pledge, hypothecate or otherwise dispose of, either for money, work or material to be used in the construction and equipment of said railroad, all or any portion of such mortgage, bonds or other securities, or bonds received from any county, town, village or city at par or at such price less than par as the said directors may by resolution, to be by them adopted, deem advisable; any such mortgage or deed of trust and every discharge or satisfaction thereof, may be recorded in the office of the secretary of state, in a proper book kept for that purpose, and the certificate of such record-

ing endorsed on such mortgage or deed of trust, shall have 4512
the same effect as if such mortgage or deed of trust was recorded in the several counties through which such road may run, and such record in the office of the secretary shall be sufficient notice to all persons.

Sec. 13. The company hereby created shall for all and every of the lands and property which it shall appropriate, take, possess, occupy or use (unless the same be donated to them), pay the value thereof, at the time and in the manner herein provided; and such value shall be ascertained, fixed and determined by mutual agreement between the said company and the owners of such land and property respectively, 4513
or by and through the medium and appraisement and determination and award of commissioners appointed as hereinafter provided.

Sec. 14. When the said corporation shall not agree with the owner or owners of such required land for the purchase thereof or as to the compensation to be paid therefor, or when by reason of the legal incapacity or of the absence of such owner or owners no such agreement can be made, then and in that case it shall be lawful for any judge of the supreme, circuit or county courts of the state on application of the 4514
said company, or the owner of owners of such land, and at the cost and charge of said company, to appoint three disinterested persons residing in the county through which the said road runs, whose duty it shall be to view and examine the lands so taken, with the buildings and improvements if any thereon, and to estimate the value of the lands so taken and required by said company, and all the damages which the owner or owners thereof shall sustain or may have sustained by reason of the taking of the same for the construction and use of said road or works appertaining thereto. And it shall be the duty of said 4515
company, or of the owner or owners aforesaid, as the case may be, to give three weeks' notice of their application to the judge of the supreme, circuit or county courts for the appointment of said commissioners, to be published for three successive weeks in a newspaper published (if there be any) in the county in which such land may be situated, and the affi-

4516 davit of the printer or publisher shall be sufficient legal evidence of such publication; and the persons so appointed, before entering upon the discharge of such duties, shall take an oath before some justice of the peace or other person competent by law to administer oaths faithfully and to the best of their ability to examine the lands so taken or required by said company, and impartially to estimate and appraise the value of the same, and the damage or injury which the owner or owners thereof shall have sustained or may sustain by reason of the taking and use thereof by said company, whereupon such
4517 commissioners shall proceed to examine the premises and estimate the value of such land and the amount of damage, and they or a majority of them shall make a report in writing of such valuation, under their hands and seals, to the circuit court of the county wherein the land lies, and shall return the same within ninety days after their appointment to the clerk of the circuit court of the county where they reside, and it shall be the duty of the said clerk to immediately file the same; and in case no appeal shall be made within thirty days after the filing of the said report, as hereinafter provided, then the said clerk shall record the same at the expense of
4518 said company, and judgment of the said court shall be entered thereon on motion of either party at any term of said court; provided, that either party may appeal to said court within thirty days after said report shall have been filed in the clerk's office, and such appeal may be tried in the same manner as other issues on trial in said court; and the jury empanelled to try the same shall find the value of the land so taken as required by said company, and the damages which the owner or owners thereof shall have sustained by the taking of the same and the judgment of the said court shall be entered accordingly; provided, also, that it shall not be lawful
4519 for the said commissioners or said court to proceed in the assessment of damages, or in the valuation of any lands or materials as aforesaid in the absence of the owner or owners, his, her or their agents or attorneys, unless it be shown to them by competent testimony that the said owner or owners shall have had at least five days' notice of the time and place at which such assessment or valuation was to be made, or that the said owner or owners were absent from the State of

Wisconsin; and if the said owner or owners shall be minors or 4520
non compos mentis, or absent from the state, the service of notice may be made on the guardian or trustee if there be any, or in such manner as the court may direct; provided, also, that upon the making and filing of the report as aforesaid, and payment in legal tender of the amount of any valuation or appraisal specified therein, to the owner or owners of any such lands, his, her or their legal representatives, on payment thereof into the circuit court of the county in which such land shall be situated, for the owner or owners thereof, the said company, their agents, or the contractor for making or repair-
ing said railroad may immediately take and use the same 4521
without awaiting issue of any appeal brought thereon, and provided, also, that in case of an appeal as aforesaid by the owner or owners of such land, the said company immediately on notice of the perfection of such appeal shall pay into court to abide the judgment therein the amount awarded by such commissioners; and in case of any appeal by the company, it shall be the duty of such company to execute a bond with sufficient surety, to be approved by the court, conditioned to pay any judgment that may be ren-
dered therein, and to abide by the order of the court in the 4522
premises; such bond shall be filed at the time of entering the appeal, and in case of neglect or refusal, unless further time so to do shall have been granted by the court, the appeal may be dismissed on motion. Whenever any judgment shall have been entered as herein provided, for the value of any lands, or for any damages for taking and using the same, and the amount specified in such judgment shall have been paid or tendered to the owner or owners of such land, his, her or their legal representatives, the said company shall be entitled to the estate and interest in the same, as fully as if it had been conveyed in fee simple; and if such valuation be not received 4523
when tendered, it may at any time thereafter be received, or may be collected from said company by action at law, at the cost and expense of the person or persons entitled to the same; provided, that the costs of any proceedings and judgment specified in the last preceding section shall be taxed by the court and paid by such company, except in cases when

upon appeal the verdict of the jury shall be for the same or for a less sum than that reported by the commissioners.

Sec. 15. The capital stock of the company hereby created shall in the first instance be five million dollars, which capital stock may be increased to any sum not exceeding ten million dollars; the said capital stock to be divided into shares of one hundred dollars each.

Sec. 16. The several counties, towns, villages and cities upon or contiguous to the line of the said road by this act authorized to be constructed, as the same may hereafter be located and established, are, and each of them hereby is authorized to aid in the construction of said railroad, by subscribing to the stock of the company and paying for the same in money, and levying a special tax to raise money for that purpose, or by issuing bonds to said company in payment for said stock and levying taxes to pay the interest as it accrues upon said bonds, and to establish a sinking fund for the gradual redemption and ultimate full redemption of said bonds at maturity; and for these purposes the board of supervisors or officers of such counties or towns; the boards of trustees of such villages and the common council of such cities, respectively and severally, shall have power to negotiate and arrange the terms and conditions upon which such aid shall be granted; to enter into all proper contracts with said company in relation to the same, and to adopt such ordinances and regulations pertaining thereto, or to the taxes to be levied under this act, as may be expedient and proper and consistent with law; provided, that before any such aid shall be granted or contracted for by any such county, town, village or city, the question of granting the same shall be submitted to a vote of the electors thereof respectively, as hereinafter provided.

Sec. 17. Whenever the president and secretary of the said Superior and St. Croix Railroad Company shall certify under their hands and the seal of the said company to the authorities of any such county, town, village or city, that the route of said railroad has been located through or contiguous to such county, town, village, or city, it shall be the duty of the authorities thereof, hereinbefore mentioned, to call a

special election to determine the question whether aid shall 4528
be granted to said company in the manner prescribed in the preceding section of this act. Such election shall be called, notice thereof shall be given, the form of ballots shall be prescribed and all regulations relating to the same be determined by the proper authorities hereinbefore mentioned of such counties, towns, villages and cities, so that the question be fairly submitted to a vote of the electors. In case at any such election the majority of votes shall be against granting such aid, the proper authorities may afterwards, in their discretion, call another election upon the same subject, and the same shall be conducted in a like manner. 4529

Sec. 18. If at any election authorized by this act any such county, town, village or city shall vote in favor of granting such aid by a majority of the votes cast at such election, then the authorities thereof shall have and exercise, in their discretion, the powers conferred upon them by the preceding sections of this act, and all contracts made by them by virtue thereof, shall be valid and enforceable according to the true intent and meaning thereof.

Sec. 19. The several counties, towns, villages and cities, which shall subscribe for the stock of said company, as authorized by this act, are hereby authorized severally to own, 4530
control and dispose of the same in the same manner as an individual might do, and to vote upon the same by agent duly authorized at an election held by the stockholders of the said company.

Sec. 20. All property which the company hereby created is authorized to appropriate, take, possess, hold or use, by making payment therefor, is hereby declared to be for public use as soon as the company shall so appropriate, take, possess, hold or use the same.

Sec. 21. It is hereby declared that in the judgment of the legislature of this state, the object of the corporation hereby created cannot be attained under the general laws. 4531

Sec. 22. This act is hereby declared to be a public act, and the same, immediately after the passage thereof, shall be printed by the state printer, and be in full force and effect from and after its passage.

Approved March 15, 1870.

4532

CHAPTER 2.

AN ACT to amend chapter 326 of the private and local laws of 1870, entitled "an act to incorporate the Superior and St. Croix Railroad Company."

The people of the State of Wisconsin, represented in senate and assembly do enact as follows:

Section 1. Section one of chapter 326 of the private and local laws of 1870 is hereby amended so as to read as follows:
4533 "F. W. Gates, R. G. Coburn, E. W. Anderson, Jr., Hiram Hayes, S. H. Clough, Hiram Robbins, D. W. Maxon, John J. Tallmadge, H. L. Palmer, S. B. Dresser, O. S. Powell, James Edwards and Peter E. Bradshaw, and such other persons as may be associated with them, who shall become stockholders in the association or corporation hereby created in accordance with the provisions of this act, shall be and they are hereby created a body corporate and politic by the name and style of the Superior and St. Croix Railroad Company, and by that name shall have perpetual succession, be competent to contract and be contracted with, sue and be sued, implead
4534 and be impleaded, answer and be answered, defend and be defended, in any court whatever. The said corporation may make, have and use a common seal, which it may alter or renew at pleasure; it shall be capable of acquiring by deed, lease or other conveyance a fee simple or any less estate in lands, tenements or easements in the same, and of conveying any such estate or interest by deed, lease or other conveyance, and of holding such estate or interest, or any other estate necessary to the use of the said railroad, either real, personal or mixed, and shall have and enjoy all the privileges,
4535 franchises and immunities incident to a corporation, and may do and perform it shall lawfully appertain to do and perform for the well being of said corporation."

Sec. 2. Section eleven of said chapter is hereby amended so as to read as follows: The persons named in the first section shall be the first directors, and unless sooner superseded by an election of directors at the first annual meeting of the company, shall hold their offices until the first Wednesday of

May, A. D. 1871, and until others are chosen in their places; 4586
and in case of vacancy in the directors, by reason of the death or resignation of any director, or of his ceasing to be a stockholder, it may be filled by the remaining directors until the next annual election, or until some other person shall be elected to fill the same. The directors herein named may appoint three persons, who shall be stockholders, to be inspectors at the first election, after which the stockholders shall choose three such inspectors at the annual election. If no inspectors are chosen, the directors may appoint three from time to time. If at any time an election of directors 4587
shall not take place on the day appointed by this act, the corporation shall not for that cause be dissolved, but an election may be held on another day, in such manner as shall be prescribed by the directors, or provided for by the by-laws.

Sec. 3. This act shall take effect and be in force from and after its passage.

Approved January 20, 1871.

CHAPTER 328.

4588

AN ACT to amend section 2, chapter 326 of the private and local laws of 1870, approved March 15, 1870, entitled "an act to incorporate the Superior and St. Croix Railroad Company."

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. Section two of said act is hereby amended so as to read as follows: Sec. 2. The company by this act created are hereby authorized and empowered to survey, locate, and from time to time, alter, change and relocate (so as not 4589
materially to change the route), and to construct and complete, perpetually to have, use and enjoy, maintain and operate the said railroad with one or more tracks or lines, over and along the following routes, that is to say beginning at some convenient point on the west shore of the bay of Superior, or on the south shore of the bay of St. Louis, in the county of Douglas, running thence southerly by a route as

4540 direct as may be practicable, through the counties of Douglas, Burnett, Polk, St. Croix and Pierce via St. Croix Falls and Hudson to Prescott, with a branch or extension running westerly from the above designated place of beginning, in Douglas county, to such point on the Minnesota boundary, north of the Nemadji river, as may be deemed desirable by the directors of said railroad company; provided, said company shall have the right to construct its line of road along the westerly shore of the bay of Superior, from the extreme end of Connor's Point to the southerly end of said bay, or
4541 such point thereof as may be deemed advisable by the directors of said railroad company, and shall have the authority to construct and maintain a bridge across the St. Louis river at any point at or above Connor's Point in said county of Douglas, whenever the same shall be assented to by resolution by the board of supervisors of the town of Superior.

Sec. 2. This act shall be in force after its passage and publication.

Approved March 16, 1871.

(Published April 19, 1895. No. 400 S.)

4542

CHAPTER 244.

AN ACT to amend chapter 326 of the private and local laws of 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company," and chapter 328, of the private and local laws of 1871, entitled "An act to amend section 2, chapter 326, of the private and local laws of 1870, approved March 15, 1870, entitled 'An act to incorporate the Superior and St. Croix Railroad Company.'"

4543 The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

Section 1. Section 2 of chapter 326 of the private and local laws of 1870, entitled "An act to incorporate the Superior and St. Croix Railroad Company," as amended by chapter 328, of the private and local laws of 1871, entitled "An act to amend section 2, chapter 326 of the private and local laws of 1870," approved March 15, 1870, entitled "An act to incorporate the

Superior and St. Croix Railroad Company," is hereby amend- 4544
ed so as to read as follows: Sec. 2. The said company is hereby authorized and empowered to survey, locate and construct, and to acquire, by purchase or otherwise, and to equip, maintain, operate, and perpetually to have, use and enjoy a railroad or railroads, with one or more tracks, from a point or points on the bay of Superior, at the west end of Lake Superior, in Douglas county, Wisconsin, to be selected by the board of directors, upon such route or routes as such board shall adopt, to such point or points on the Minnesota state line as such board shall select, and thence westward, 4545
upon such route or routes as such board shall adopt, to such point or points on the Pacific coast as such board shall select; and from said point or points in Douglas county easterly, upon such route or routes as such board shall adopt, to or near Ashland, in the county of Ashland, in the State of Wisconsin, and thence by such route or routes and to such point or points in the State of Michigan, as such board shall select; also from said point or points in Douglas county, upon such route or routes as such board shall adopt, through the counties of Douglas, Burnett, Polk, St. Croix and Pierce, or any of them, to Prescott, on the Mississippi 4546
river, with a branch from some point in one of said counties, to be selected by the board of directors, to St. Paul and Minneapolis, Minnesota, or to either of said places; also from said point or points in said Douglas county, or from some point to be selected by such board on any railroad or railroads which the said company is or hereafter may be authorized to construct or otherwise acquire, upon such route or routes as such board shall adopt, through the states of Wisconsin and Illinois to or into the city of Chicago, in the county of Cook, in said last named state. And the
said company is further authorized and empowered to survey, 4547
locate, construct, and to acquire, by purchase or otherwise, and to equip, maintain and operate, and perpetually to have, use, possess and enjoy, branch lines of railroad from its main line or lines in and into or through any state or territory of the United States, or extending into or lying within the Dominion of Canada, or any portion or province thereof, from

and to such points as shall be determined by such board of directors.

Sec. 2. Section 3 of said chapter 326 is hereby amended so as to read as follows: Sec. 3. The said company shall have the perpetual right, power and authority to transport, take and carry property and persons upon such railroad or railroads, by steam or other motive power, and to receive and store any property in any of its depots or other buildings, including elevators, and to make, construct, maintain, acquire and use all of such switches, turnouts, sidetracks, spur and other tracks as it shall deem necessary; and also to construct, erect, acquire and maintain all such depots, station houses, warehouses, car houses, shops, engine houses, elevators and other buildings, fixtures, structures and things necessary or convenient for use by said company in the operation of its railroads and in the transaction of its business as a carrier of freight and passengers. And said company shall have power to connect its railroad or railroads with any other railroad or railroads, and to operate the same under lease or otherwise, or to run in connection with any such railroad or railroads, in such manner as may be agreed upon between the board of directors of said company and the board of directors of the company or companies owning or operating any such connecting railroad or railroads. And any railroad company, person, association or corporation having a railroad or railroads, constructed or partly constructed, running in the direction of the line or lines of railroad which the said company is by this act or may hereafter be authorized to construct, acquire and operate, which said company shall agree to use or connect with, is hereby authorized to make to said company (created by said chapter 326), a lease, sale, or trackage arrangement, perpetual or for a time limited, of the whole or any part of said railroad or railroads so constructed or partly constructed, together with the rolling stock, machinery, buildings, tenements or fixtures, and all property, real, personal or mixed, of the said railroad company, person, association or corporation, together with its or their franchises, rights, privileges and immunities and in consideration of such lease, use or sale, to take or receive such rent, commuta-

tion of rental, payment or other consideration as may be 4552
agreed upon.

Sec. 3. Section 4 of said chapter 326 is hereby amended so as to read as follows: Sec. 4. Said company shall have the right, authority and power, and it is hereby authorized and empowered, subject to the provisions of section 1836 of the revised statutes, to construct, maintain and operate its railroad or railroads across, along or upon any stream of water, water course, street, highway, plank road, turnpike or canal which its route or routes shall intersect or touch; to carry any highway, street, turnpike or plank road which 4553
it shall touch, intersect or cross over or under its tracks, as may be most expedient for the public good; to change the course and direction of any highway, street, turnpike or plank road, when made necessary or desirable to secure more easy ascent or descent by reason of any embankment or cut made in the construction of its railroad or railroads, and to take land necessary therefor; provided such highway or road be not so changed from its original course more than six rods, nor its distance thereby lengthened more than five rods, and the said company shall also have power, and it is hereby empowered, to cross, intersect, join and unite its rail- 4554
road or railroads with any railroad now or hereafter constructed, at any point on its route, and upon the grounds of such railroad corporation, with the necessary turnouts, sidings and switches and other conveniences, in furtherance of the objects of its connection. And the said company shall also have power, and it is hereby empowered to erect, purchase and maintain all necessary bridges for the use of its railroad or railroads, main and branch, over any stream of water or water course, at such point or points of crossing the same as said railroad or railroads may be located or constructed together with all necessary abutments, piers, arches, 4555
foundations and other structures.

Sec. 4. Section 5 of said chapter 326 is hereby amended so as to read as follows: Sec. 5. It shall be lawful for the said company, and it is hereby authorized and empowered by its officers, engineers, servants and workmen to enter upon any land or lands for the purpose of exploring, surveying, locating and establishing the route or routes of said rail-

road or railroads; and when the said route or routes, or any portion thereof shall be determined by resolution adopted by its board of directors, it shall be lawful for said company, and it is expressly authorized and empowered to purchase and hold such land or lands for right-of-way, sidetracks, spur tracks, water tanks, construction of roadbed and maintenance of same, station houses, warehouses, elevators, engine houses, shops, and for such other purposes as may be necessary, usual or convenient for the operation of said railroad or railroads or in connection therewith; and whenever said company cannot agree with the owners and other parties interested in any such land upon the price to be paid therefor, or for the occupation thereof, or for any interest therein, it shall have the right, and it is hereby expressly authorized and empowered to acquire the same by condemnation proceedings, to the extent and in the manner provided by sections 1845 to 1856, inclusive, of the revised statutes of 1878.

Sec. 5. Section 6, of said chapter 326, is hereby amended so as to read as follows: Sec. 6. Upon the completion or acquisition of said railroad or railroads, or any part thereof, it shall be lawful for said company, and it is hereby authorized and empowered, to demand, collect and receive such sum or sums of money for the transportation of persons and property, and for the storage of property, as shall be reasonable.

Sec. 6. Section 7, of said chapter 326, is hereby amended so as to read as follows: Sec. 7. Said company shall also have full power, and it is hereby expressly authorized, to carry and transport persons and property in boats, steamships, vessels, barges and other water craft upon any of the navigable waters which its railroad or railroads shall run to, over or connect with, and to demand, receive and collect such compensation for the same as it shall from time to time deem reasonable, and for that purpose the said company is authorized and empowered to build, lease, purchase, own and use, either directly or through a corporation or corporations organized by it or otherwise for the purpose, and whose stock in whole or in part it shall own, such boats, steamships, vessels, barges and other water craft as in its judgment may be necessary or convenient for its use.

Sec. 7. Section 8, of said chapter 326, is hereby amended 4560
so as to read as follows: Sec. 8. The said company shall be capable in law of taking, holding and selling any lands granted to it, or to any company whose property it shall acquire, by purchase or otherwise, by the government of the United States, or by this state, or by any state or territory through or in which it shall acquire in any manner, and operate, any railroad or railroads, wherever the said lands may be situated, or by grant by persons, companies, corporations or associations, within or without this state, to aid in the construction or operation of any railroad or railroads by it 4561
constructed or otherwise acquired, or authorized to be by it constructed or acquired; and the said company may also pledge, hypothecate, mortgage or otherwise dispose of all of its right, title and interest in and to said lands, or any part thereof, and in and to any other estate, real, personal or mixed, of which it, the said company, may be seized at the time of the execution of any mortgage or deed of trust, or of which it may become seized subsequent to the execution and delivery of any such instrument or instruments, including its franchise to be a corporation and to own, maintain and operate such railroad or railroads; and the said company may sell 4562
or lease any of its branch roads, however acquired, whenever it shall be declared by resolution of the board of directors, subject to the approval of the holders of record of a majority of the outstanding capital stock, that the interests of the company and its stockholders will be thereby subserved.

Sec. 8. Section 9, of said chapter 326, is hereby amended so as to read as follows: Sec. 9. All of the affairs of said company shall be managed by a board of directors, who shall be stockholders, and who are hereby invested with all the powers of the corporation, save as hereinafter provided. They shall be chosen annually by ballot by the stockholders 4563
at the annual meeting of the company, which shall be held on such notice, and at such time, as shall be prescribed by the by-laws, and at such place, within or without the state, as shall be prescribed by the board of directors, and stated in such notice. At all meetings of the stockholders each stockholder shall be entitled to one vote for each share of stock held by him, under such conditions and regulations as may be

prescribed or referred to in the certificates thereof, and may vote the same in person or by proxy duly authorized, and no business shall be transacted at any meeting of the stockholders unless a majority of the stock subscribed and outstanding is represented. In all elections of directors those stockholders having the greatest number of votes shall be deemed and declared duly elected. Elections shall be conducted in such manner as shall be prescribed by the by-laws of the company, and if for any cause an election of directors shall not be had at the time when by the provisions of this act or by the by-laws it should be had, the same may be held at any other time, on notice to be given as aforesaid, and until such election be had the directors of the preceding year shall continue to act, until their successors are duly elected and qualified. The company may at any time increase or diminish the number of directors to be elected at the next annual meeting of the stockholders, and the number to be elected shall be specified in the notice of meeting, but shall never be less than five nor more than seventeen; and the said company may by a vote of a majority of the stockholders present or represented at any annual meeting, classify its directors into three classes, each of which shall be composed as nearly as may be of one-third of the directors, the term of office of the first class to expire in one year, of the second in two years, and of the third in three years. At each annual election thereafter a number of directors shall be elected for three years equal to the number whose term of office shall then expire. All vacancies shall be filled in accordance with the by-laws.

Sec. 9. Section 10, of said chapter 326, is hereby amended so as to read as follows: Sec. 10. A majority of the board of directors shall constitute a quorum for the transaction of any business. They shall meet at such times and be convened in such manner as the by-laws shall prescribe, and at such places as the board shall decide upon. Whenever all of the members of the board of directors are present at any meeting it shall be competent for them, having signed upon the minutes a waiver of notice of meeting, to transact business as fully to all intents and purposes as if the said meeting had been duly convened pursuant to notice. They shall elect one of their own number to be president, and one to be vice-presi-

dent, and they may elect additional vice-presidents, and such 4568
other officers of the board, and impose upon them such duties, and confer upon them such powers, as the board may by resolution prescribe. The duties of the president and other officers at meetings of the board and stockholders shall be prescribed by the by-laws. The board of directors shall have power to appoint an executive committee, and to confer upon and to delegate to said committee the full power of the board of directors when the latter is not in session; and the board may appoint a secretary, treasurer, comptroller and such other officers and agents as it may deem necessary, and it 4569
may remove them at pleasure, prescribe their duties and compensation, and may demand adequate security for the discharge of their respective duties.

Sec. 10. Section 11, of said chapter 326, is hereby amended so as to read as follows: Sec. 11. The capital stock of said company may be increased from time to time to such an amount as may by its stockholders be deemed necessary for the construction, acquisition or operation of any of its railroad or railroads, by a vote of the owners of record of at least a majority of all its outstanding stock, in person or by proxy, at any annual meeting, or at any meeting called for that pur- 4570
pose, by a notice in writing to each stockholder, to be served upon him personally, or by depositing the same in the postoffice, postage paid, properly directed to him at the postoffice nearest his usual place of residence, at least twenty days prior to such meeting. Such notice shall state the time and place of such meeting, its object, and the amount to which it is proposed to increase such capital stock. No vote in favor of such increase shall take effect until the proceedings of such meeting showing the names of the stockholders voting therefor, and the amount of stock owned by each, shall be entered upon the records of said corporation, and the said company 4571
may at any such time, by a vote of the holders of record of two-thirds of said outstanding stock classify its said stock into common and preferred, and it may further classify its said stock by dividing its preferred into different classes and it may make any or all of said classes of preferred stock cumulative or non-cumulative as to dividends thereon, and any or all of said preferred stock may be with or

without preference over any other stock or classes of stock in the event of the liquidation of the company's affairs, either through insolvency or otherwise. And the said company may make such preferred stock convertible into common stock, upon such terms and conditions as may be fixed by the board of directors.

Sec. 11. Section 12, of said chapter 326, is hereby amended so as to read as follows: Sec. 12. The said company is hereby expressly authorized to borrow from time to time such sums of money, and upon such terms, as the corporation or board of directors shall agree upon or authorize as necessary and expedient; and in its corporate name to execute and deliver its notes, bonds, debentures or other evidences of indebtednes in such form as shall be from time to time prescribed by the board of directors, and in such amount as shall be deemed from time to time by said board expedient; and may make the same convertible into its capital stock of any class, upon such terms and conditions as to the board of directors may seem advisable, and it may pledge or hypothecate such notes, bonds, debentures or other evidences of indebtedness as collateral security for loans made to it by any person or persons, corporation, association or body politic, and it may sell such notes, bonds, debentures or other evidences of indebtedness, at such prices and upon such terms as the board of directors shall prescribe; and it may deliver the same in discharge of any liabilities which it may have incurred, or proposes to incur, in the construction, purchase or other acquisition of any railroad or railroads or other property which it is or may hereafter be by law authorized to construct, purchase or acquire, and in the repair, equipment or operation of its railroad or railroads, main line or branch, or of any part or parts thereof, or of any steamships, steamboats, barges, ferries or other water craft acquired or owned by it, or which it desires to acquire by construction or purchase; and it may exchange the same for the stocks, bonds or other evidences of indebtedness of any railroad company whose railroad or railroads it is or may hereafter be authorized to purchase, and it may generally use the same in such manner as shall in the judgment of the board of directors subserve and promote the corporate purposes; and

the powers of said company for the purposes aforesaid, and 4576
for all purposes necessary for the carrying out of the objects, or any thereof, of said company, are hereby ratified and confirmed; and the said company may, and it is hereby expressly authorized and empowered, in order to secure the payment of any such notes, bonds, debentures or other evidences of indebtedness, execute and deliver from time to time collateral trust indentures or other security, agreements or indentures, and it may from time to time, execute and deliver trust deeds, or mortgages, or both, as occasion may require, of and upon any of its railroad or railroads or parts thereof, constructed 4577
or thereafter to be constructed or in process of construction, and it may by any such mortgage or trust deed convey and mortgage all or any of its railroad track or tracks, rights of way, depot grounds, rights, privileges, franchises, immunities, exemptions, machine houses, rolling stock, furniture, tools, bridges, elevators, steamboats, steamships, and all appendages and appurtenances, and all other property, real, personal and mixed in any manner whatever then belonging to the corporation, or which it may thereafter acquire; and it may include in any such mortgage or trust deed any grant or grants of land, or any parts thereof, owned or held by it, 4578
or in which it may be or may become interested; and it may also grant, convey and transfer by any such mortgage or deed of trust its franchise to be a corporation and its franchise to have, possess, maintain and operate the railroad or railroads and other property described in any such instrument and covered thereby; and it may also give and grant to individual bondholders the right and power to vote at meetings of stockholders upon all such questions, other than the election of directors, as may come before such meetings; and every such mortgage, deed of trust, collateral trust indenture or security agreement to be executed by said 4579
company shall be in such form, and contain such provisions, as the corporation or board of directors shall think proper. And in any such mortgage, deed of trust, collateral trust indenture or security agreement there may be inserted provisions limiting the right of individual holders of the bonds, notes or evidences of indebtedness secured thereby to sue or

recover upon any such bonds, notes or other evidences of indebtedness, or upon any coupon annexed thereto secured by said instrument, either at law or in equity, except through the trustee or trustees to whom or to which or with whom or with which such instrument is made, and every such provision shall be binding upon the holders of said bonds, notes or other evidences of indebtedness, and all thereof, and upon any court whose jurisdiction and aid may be invoked in foreclosing the lien or liens created thereby. And every such mortgage or mortgages, deed or deeds of trust or collateral trust indenture, and every discharge of satisfaction thereof, may be recorded in the office of the secretary of state, in a proper book kept for that purpose, and the certificate of such recording, indorsed on such instrument, shall have the same effect as if such instrument were recorded in the several counties in which such railroad or railroads may be located, and such record in the office of the secretary of state shall be sufficient notice to all persons of the existence and lien created by said instrument, and of the property covered by the same.

Sec. 12. The said company may lease or purchase, and take a conveyance or assignment of the railroad or railroads, franchises, immunities, and all other properties and appurtenances, and the stocks or bonds, or both thereof, of any other railroad corporation, or any portion thereof, within or without this state, when their respective railroads can be lawfully connected and operated together to constitute a continuous line, or when the railroad or railroads so leased or purchased will constitute branches or feeders of any railroad or railroads maintained and operated by such leasing or purchasing company; and the said company may purchase and hold the stock and bonds, or either thereof, of any railway company to which it has furnished the money for the construction of its railway, or may purchase for the money so furnished, or for such other consideration as may be agreed upon between the companies by their respective boards of directors, and take a conveyance of the whole or any portion of the franchise of said corporation, and of the railway property and appurtenances thereof.

Sec. 13. And the said company may, and it is hereby ex- 4584
pressly authorized and empowered, to purchase or otherwise acquire and hold the stock or bonds, or both thereof, of any corporation (wherever organized) the franchises, functions or operations of which may or would in anywise be utilized for the convenient or more economical or safe operation of its railroad or railroads, or of any thereof; and the said company may guarantee the principal or interest, or both thereof, of the bonds, or may endorse the same, or may guarantee the dividends upon the stock, or the rentals or obligations of any lease or traffic contract, of any corporation which it may con- 4585
trol by virtue of the ownership of its stock or otherwise, and may endorse the notes of any such company, or other evidences of indebtedness of any such company, and may guarantee, by endorsement or otherwise, the bonds or other evidences of indebtedness, and the dividends upon the stock, or the rentals or obligations of any lease or traffic contract, of any corporation or corporations whose property the said company may now or hereafter be authorized by law to acquire by purchase or lease of the physical property thereof, or by purchase of the stock thereof.

Sec. 14. The said company shall, in addition to the special 4586
powers conferred upon it by said chapter 326, and by this act, have, possess and enjoy all of the rights, powers, privileges and immunities conferred upon railroad corporations by chapter 87 of the revised statutes of 1878, and the acts amendatory thereof and supplementary thereto, and shall be subject, save where inconsistent herewith, to the restrictions, duties and liabilities imposed upon railroad corporations by said chapter, and all amendatory and supplementary acts.

Sec. 15. Sections 13, 14, 15, 16, 17, 18 and 19 of said chapter 326 are hereby repealed.

Sec. 16. All acts and parts of acts inconsistent with, or in 4587
any manner contravening, the provisions of this act, are hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its passage and publication

Approved April 15, 1895.

4588 The following is a copy of the proceedings of the meetings of the stockholders of the Superior & St. Croix Railroad Company accepting amendments to the charter and changing the name of the company to Northern Pacific Railway Company, as the same appear on pages 430 to 432 of Vol. 2 of the record in the case of The United States vs. Northern Securities Co. et al., and here offered by defendants as original evidence in this case. Marked by the Examiner Defendants' *Exhibit F.*

4589 At a meeting of the stockholders of the Superior and St. Croix Railroad Company, held at the office of John C. Spooner, in the City of Madison, State of Wisconsin, on the 8th day of October, 1895, at 10 o'clock A. M., pursuant to adjournment, all of the stockholders being present, in person or by proxy, the following resolutions were duly and unanimously adopted, by a stock vote, to-wit:

Resolved, That the action of Hiram Hayes, secretary, in applying for and procuring the amendment to the charter of the company made by chapter 244 of the laws of 1895, entitled "An act to amend chapter 326 of the Private and Local
4590 Laws of 1870, entitled, 'An act to incorporate the Superior and St. Croix Railroad Company,'" and chapter 328 of the Private and Local Laws of 1871, entitled, "An act to amend section 2, chapter 326, of the Private and Local Laws of 1870, approved March 15, 1870, entitled 'An act to incorporate the Superior and St. Croix Railroad Company,'" be, and the same is hereby, ratified and approved.

Resolved further, That this company does hereby accept the said chapter, and each and every part thereof.

Resolved, That the president and secretary of the company
4591 be, and they are hereby, authorized and instructed to execute on behalf of the company, and under its corporate seal, and to file with the secretary of state, a certified copy of the foregoing resolution accepting said chapter 244 and the amendments to the charter therein and thereby made.

State, County and City of New York, ss.:

We, Edward D. Adams, president, and George H. Gardiner, secretary, of the Superior and St. Croix Railroad Company,

a corporation organized and existing under the laws of the 4592
state of Wisconsin, do hereby jointly and severally certify that we have compared the foregoing with the originals thereof as they appear upon the records of the company, and that the same are true and correct copies of said originals, and of the whole thereof, and that the same were adopted at a meeting of said company duly held as in the caption hereof stated and set forth.

In witness whereof, we have hereunto, pursuant to the instructions of the stockholders, as aforesaid, set our hands, and caused the common corporate seal of the company to be hereto affixed. 4593

EDWARD D. ADAMS,
President.

GEORGE H. GARDINER,
Secretary.

[Corporate Seal.]

Indorsed:

State of Wisconsin, Department of State, ss.:

Received this 10th day of July, A. D. 1896, and recorded in volume 8 of R. R. Inc. and Res. on page 625. 4594

G. E. VANDERCOOK,
Assistant Secretary of State.

At a meeting of the stockholders of the Superior and St. Croix Railroad Company, duly held at the office of Spooner, Sanborn, Kerr & Spooner, in the City of Madison, State of Wisconsin, on the 1st day of July, A. D. 1896, at 2 o'clock P. M., all of the holders of record of the capital stock of said company being duly represented at said meeting, the following, among other proceedings, were duly had, to-wit:

4595

On motion of Mr. Spooner, seconded by Mr. Reed, the following resolution was, by a stock vote, unanimously adopted, every share of the outstanding stock of said company voting therefor to-wit:

Resolved, That the corporate name of this corporation be, and the same is hereby, changed from the "Superior and St. Croix Railroad Company," to "Northern Pacific Railway Com-

4596 pany," which latter name is hereby adopted as the corporate name of this corporation.

State, County and City of New York, ss.:

I, George H. Gardiner, secretary of the Superior and St. Croix Railroad Company, and the custodian of its books, records and common corporate seal, do hereby certify that I have compared the above and foregoing with the original resolution, and with the record of its adoption above set forth, and that the same is a true and correct copy of the said reso-
4597 lution, and of the whole thereof, and of the record of the adoption thereof, at a meeting of the stockholders of said company duly held as in the caption hereof set forth.

In Witness Whereof, I have, pursuant to the order of the stockholders in this behalf duly made, hereunto set my hand and affixed the said corporate seal this 8th day of July, A. D. 1896.

GEORGE H. GARDINER,
Secretary Superior and St. Croix
[Corporate Seal.] Railroad Company.

Indorsed:

4598

State of Wisconsin, Department of State, ss.:

Received this 10th day of July, A. D. 1896, and recorded in Vol. 8 of R. R. Inc. & Res. on page 624.

G. E. VANDERCOOK,
Assistant Secretary of State.

4599

The following is a copy of the proceedings of a meeting of stockholders of the Superior & St. Croix Railroad Company, now Northern Pacific Ry. Co., held July 1, 1896, as the same appears on pages 370 to 379 of Vol. 2 of the Records in the case of The United States vs. Northern Securities Co. et al., and here offered by the defendants as original evidence in this case. Marked by the Examiner Defendants' *Exhibit G.*

DEFENDANTS' EXHIBIT G. 1155

SUPERIOR & ST. CROIX RAILROAD COMPANY. 4600

Stockholders' Meeting, July 1, 1896, Madison, Wisconsin.

Office of Spooner, Sanborn, Kerr & Sanborn.

July 1, 1896, 2 o'clock P. M.

The holders of record of all outstanding capital stock of the Superior & St. Croix Railroad Company being present this day at the time and place above stated as follows:

A. H. Gillard, owning one share, by John C. Spooner, A. L. Sanborn and H. C. Reed, holding the written proxy of 4601
said Gillard, which was presented and filed;

Walter B. Horn, owning one share, by John C. Spooner, A. L. Sanborn and H. C. Reed, holding the written proxy of said Horn, which was presented and filed;

Charles F. Cooney, owning twenty-four shares, by John C. Spooner, A. L. Sanborn and H. C. Reed, holding the written proxy of said Cooney, which was presented and filed;

Charles F. Coaney, assignee C. W. Reed estate, owning one share, by John C. Spooner, A. L. Sanborn and H. C. Reed, holding the written proxy of said Coaney, which was presented and filed; 4602

Mortimer F. Smith, owning one share, by John C. Spooner, A. L. Sanborn and H. C. Reed, holding the written proxy of said Smith, which was presented and filed;

Edward D. Adams, owning eleven shares, by John C. Spooner, A. L. Sanborn and H. C. Reed, holding the written proxy of said Adams, which was presented and filed;

Henry E. Lord, owning one share, by John C. Spooner, A. L. Sanborn and H. C. Reed, holding the written proxy of said Lord, which was presented and filed;

H. B. Bodine, owning one share, by John C. Spooner, A. L. Sanborn and H. C. Reed, holding the written proxy of 4603
said Bodine, which was presented and filed;

W. Paxton Little, owning one share, by John C. Spooner, A. L. Sanborn and H. C. Reed, holding the written proxy of said Little, which was presented and filed;

John W. Almy, junior, owning one share, by John C. Spooner, A. L. Sanborn and H. C. Reed, holding the written proxy of said Almy, which was presented and filed;

4604 Each of said proxies being identical, except as to names, with the following:

The undersigned, being a stockholder of the Superior & St. Croix Railroad Company, a corporation of the State of Wisconsin, does hereby make, constitute and appoint John C. Spooner, A. L. Sanborn and H. C. Reed, jointly and severally, his attorneys and proxies in his behalf and in respect of all stock of said company owned or held by the undersigned to attend at a meeting of the stockholders of the said company to be held in the state of Wisconsin on the first day of July, at two o'clock in the after-
4605 noon, and then and there, in behalf of the undersigned, to vote in respect of all stock held or owned by the undersigned for a change in the name of said company to "Northern Pacific Railway Company," and to an increase of the capital stock of said company to the aggregate sum of $155,000,000; to be divided into preferred stock to the aggregate amount of $75,000,000, and common stock to the aggregate amount of $80,000,000; hereby giving and conferring to said attorneys and proxies, either at said meeting or at any adjournment or adjournments
4606 thereof, authority to vote for the propositions aforesaid, and also to vote in respect of any and all matters that may come before such meeting at any adjournment thereof; and also to sign upon the books of the company or elsewhere a waiver of notice of any stockholders' meeting, and a consent that meetings shall be held without notice and business fully transacted thereat as if said meeting had been duly called, all with the same force and effect as though the undersigned were personally present and cast such vote.

In witness whereof, the undersigned has hereunto sub-
4607 scribed his name this 27th day of June, 1896.

EDWARD D. ADAMS.

All of the stockholders being present and with the proxies as aforesaid, and it being desired to hold a meeting of the stockholders for the transaction of important business, and as section five of the by-laws provides as follows:

"At all metings of the stockholders every registered owner of shares may vote in person or by proxy,"

the stockholders did thereupon, by their attorneys and proxies, as aforesaid, execute and sign the following waiver of notice and consent to the holding of this meeting: 4608

Madison, Wisconsin, July 1, 1896.

We, the undersigned, owning and holding of record all of the outstanding capital stock of the Superior and St. Croix Railroad Company, and being, therefore, all of the members of the said corporation, and deeming it important that a stockholders' meeting be now held, and no notice of such meeting having been given, do hereby waive notice of this meeting and consent to the holding of a stockholders' meeting at this 4609 time and place for the purpose of changing the name of the company to "Northern Pacific Railway Company," and for the purpose of increasing the capital stock of the company to the aggregate sum of $155,000,000, to be divided into preferred stock to the aggregate amount of seventy-five millions of dollars, and common stock to the aggregate amount of eighty millions of dollars, and for the transaction of any business at said meeting which could lawfully be transacted at any meeting of the members of such corporation regularly called and notified.

4610

	Shares.
A. H. Gillard, by John C. Spooner, A. L. Sanborn and H. C. Reed, his proxies	1
Walter B. Horn, by John C. Spooner, A. L. Sanborn and H. C. Reed, his proxies	1
Charles F. Coaney, by John C. Spooner, A. L. Sanborn and H. C. Reed, his proxies	24
Charles F. Coaney, assignee C. W. Reed estate, by John C. Spooner, A. L. Sanborn and H. C. Reed, his proxies	1
Mortimer F. Smith, by John C. Spooner, A. L. Sanborn and H. C. Reed, his proxies	1
Edward D. Adams, by John C. Spooner, A. L. Sanborn and H. C. Reed, his proxies	11
Henry E. Lord, by John C. Spooner, A. L. Sanborn and H. C. Reed, his proxies	1
H. B. Bodine, by John C. Spooner, A. L. Sanborn and H. C. Reed, his proxies	1

4611

4612 W. Paxton Little, by John C. Spooner, A. L. Sanborn and H. C. Reed, his proxies..... 1
John W. Almy, Junior, by John C. Spooner, A. L. Sanborn and H. C. Reed, his proxies..... 1

Whereupon on motion of John C. Spooner, seconded by H. C. Reed, A. L. Sanborn was chosen chairman of the stockholders' meeting.

On motion of John C. Spooner, seconded by A. L. Sanborn, H. C. Reed was elected secretary of the meeting.

4613 Whereupon Mr. Spooner offered the following resolution and moved the adoption of the same:

"Resolved, That the corporate name of this corporation be, and the same is hereby changed from the Superior and St. Croix Railroad Company to Northern Pacific Railway Company, which latter name is hereby adopted as the corporate name of this corporation."

The motion being seconded by Mr. Reed, on the stock vote the resolution was unanimously voted, 43 shares of stock voting therefor.

4614 On motion of Mr. Spooner, seconded by Mr. Reed, the following resolution was unanimously adopted:

"Resolved, That the secretary of the corporation be, and he is hereby instructed to file in the office of the secretary of the state of Wisconsin a copy of the foregoing resolution, and of the record of its adoption, certified under his hand and the corporate seal of the corporation, and to publish a like certified copy of said resolution for three successive weeks in the Wisconsin State Journal, the official state paper, as provided by section 1835 of the revised statutes of Wisconsin for 1878."

4615 Mr. Spooner offered and moved the adoption of the following preamble and resolutions:

"Whereas, by section fifteen of the original charter of the corporation it was provided that its capital stock should be in the first instance five millions of dollars, and that the same might be increased to any sum, not exceeding ten millions of dollars, said capital stock to be divided into shares of one

hundred dollars each, no increase of said capital stock ever having been made under said charter provisions; and 4616

"Whereas, by chapter 244 of the laws of the state of Wisconsin for the year 1895, approved April 15th of said year, it is provided by section 10, among other things, as follows:

"Section 10. Section 11 of said chapter 326 is hereby amended so as to read as follows:

"Section 11. The capital stock of said company may be increased from time to time to such an amount as may by its stockholders be deemed necessary for the construction, acquisition, or operation of any of its railroad or railroads by a 4617
vote of the owners of record of at least a majority of all its outstanding stock, in person or by proxy, at any annual meeting or at any meeting called for the purpose by a notice in writing to each stockholder, etc.;

"And whereas, section 1826, applicable to railroad corporations organized under chapter 87 of the Revised Statutes of 1878 is as follows:

"Section 1826. The capital stock of any such corporation may be increased to such an amount as may by its stockholders, be deemed necessary for the construction or operation of its road by a vote of the owners of at least two-thirds of all 4618
its stock, in person or by proxy, at any annual meeting or at any meeting called by its directors for that purpose by a notice in writing to each stockholder, to be served on him personally or by depositing the same in the post office, postage paid, properly directed to him at the post office nearest the usual place of residence, at least twenty days prior to such meeting. Such notice shall state the time and place of such meeting, its object, and the amount to which it is proposed to increase such capital stock. No vote in favor of such increase shall take effect until the proceedings of such meeting, showing the names of all the stockholders voting therefor and the 4619
amount of stock owned by each, shall be entered upon the records of such corporation.

"And whereas, section 1829 of the Revised Statutes is as follows:

"Section 1829. All existing or future railroad corporations within this state, including such as were originally organized under chapter seventy-three (73) of the Revised Statutes of

1858, shall respectively have and possess all of the powers and privileges and be subject to all of the duties, liabilities and restrictions prescribed by this chapter, and shall also have all peculiar rights and privileges granted to them respectively by their charters or any special law not inconsistent with these statutes.

"The said several statutes conferring upon the stockholders of this corporation full power to increase its capital stock; and

"Whereas, the stockholders deem it necessary, for the construction, acquisition and operation of the railroads authorized by its charter and by the general laws of the state of Wisconsin to be by it acquired within and without the state of Wisconsin, and intended by it to be acquired by construction, purchase or otherwise, within and without said state, that the capital stock of the corporation shall be increased one hundred and fifty millions of dollars, so that the aggregate of the capital stock of the corporation shall be one hundred and fifty-five millions of dollars, the said capital stock to be divided into shares of the par or face value of one hundred dollars each; and

"Whereas, it is deemed necessary to the interests of the corporation, and to the carrying out of its business and lawful purpose, that of said aggregate of one hundred and fifty-five millions of dollars of the capital stock seventy-five millions thereof shall be preferred stock and eighty millions thereof shall be common stock;

"Now, therefore, be it first resolved; That the capital stock of this corporation be, and the same is hereby, increased from five millions of dollars to one hundred and fifty-five millions of dollars, and the same shall consist of one million five hundred and fifty thousand shares of the par or face value of one hundred dollars each, and of said stock, as the same is so hereby increased, seventy-five millions of dollars, or seven hundred and fifty thousand shares, shall be preferred stock, and eighty millions of dollars or eight hundred thousand shares shall be common stock, and the five millions of present authorized capital, including the shares now outstanding, shall be a portion of said common stock.

"Second. Resolved, That each share of the said preferred 4624
stock shall be entitled to noncumulative dividends for each fiscal year when and as declared by the board of directors of the company to the extent of four per cent per annum, payable quarterly, on the first days of March, June, September and December, out of any surplus of net profits of the company as determined by said board before any dividend shall be declared or paid in such fiscal year on the common stock; and without deduction for any tax or taxes imposed by the United States or by any state or municipality thereof that this railway company may at any time be required to pay or to retain therefrom. 4625

"Third. Resolved further, That dividends on the common stock may be declared and paid out of any surplus net profits remaining from any previous fiscal year or years from which the full dividends at the rate of four per cent per annum shall have been paid on the preferred stock; but after dividends to the extent of four per cent shall have been declared for any one fiscal year on all the stock of the company, the common as well as preferred, any further dividends for that fiscal year shall be declared only for the equal ratable benefit of all the stock, whether preferred or common. No dividends shall 4626
be paid on the common stock out of the surplus net profits of any year for which the full dividend shall not have been paid on the preferred stock.

"Fourth. Resolved further, That the company shall not put a mortgage upon its property at any time theretofore embraced in the system of the Northern Pacific Railroad Company, nor shall the amount of the preferred stock be increased except after obtaining in each instance the consent of the holders of a majority of the whole amount of the preferred stock given at a meeting of the stockholders called for that purpose and the consent of the holders of a majority of 4627
such part of the common stock as shall be represented at such meeting, the holders of each class of stock voting separately.

"Fifth—Resolved, further, That, whenever the full and regular quarterly dividends for two successive quarterly periods after July 1, 1897, upon the preferred stock, at the rate of four per cent per annum, shall not have been paid in cash, then, and in that event, at the next annual meeting such

4628 number, and only such number, of directors as will constitute a majority of the whole board shall be elected by a separate ballot of the holders of the preferred stock present or represented at such meeting, and the remainder of the board shall be elected by the separate ballot of the holders of the common stock present or represented at such meeting. In every case each share to be entitled to one vote.

"Sixth—Resolved, That such preferred stock shall be issued upon the condition that, at its option, the company may retire the same, in whole or in part, at par from time to time upon any first day of January prior to 1917.

4629 "Seventh—Resolved, That certificates for preferred stock registered in New York may be exchanged in any manner as the company may prescribe for similar certificates registered with the Deutsche Bank in Berlin, and all dividends declared on the preferred stock registered in Berlin shall be payable at the rate of 4.20 marks per dollar.

"Eighth—Resolved further, That the board of directors be, and they are hereby, authorized to make such provision as to the registration and transfer of said stock, either in this or foreign countries, or both, and as to the rate at which divi-

4630 dends upon stock registered in foreign countries shall be there collected, as may be deemed by said board for the best interests of the corporation.

"Ninth—Resolved further, That the said board of directors be, and they are hereby, authorized and empowered to prescribe the form of certificates to be issued for said common and preferred stock, and to incorporate in said certificates or to endorse upon the same such conditions and regulations as to the voting power thereof and otherwise as shall in their judgment best subserve the interests of the corporation."

The motion was seconded by Mr. Reed, and a stock vote

4631 being demanded thereon by Mr. Sanborn, the following stockholders voted in favor thereof:

A. H. Gillard, by John C. Spooner, A. L. Sanborn and H. C. Reed, his attorneys and proxies, one vote in favor of the resolution.

Walter B. Horn, by John C. Spooner, A. L. Sanborn and H. C. Reed, his attorneys and proxies, one vote in favor of the resolution.

Charles F. Coaney, by John C. Spooner, A. L. Sanborn and H. C. Reed, his attorneys and proxies, 24 votes in favor of the resolution. 4632

Charles F. Coaney, assignee C. W. Reed estate, by John C. Spooner, A. L. Sanborn and H. C. Reed, his attorneys and proxies, one vote in favor of the resolution.

Mortimer F. Smith, by John C. Spooner, A. L. Sanborn and H. C. Reed, his attorneys and proxies, one vote in favor of the resolution.

Edward D. Adams, by John C. Spooner, A. L. Sanborn and H. C. Reed, his attorneys and proxies, 11 votes in favor of the resolution.

4633

Henry E. Lord, by John C. Spooner, A. L. Sanborn and H. C. Reed, his attorneys and proxies, one vote in favor of the resolution.

H. B. Bodine, by John C. Spooner, A. L. Sanborn and H. C. Reed, his attorneys and proxies, one vote in favor of the resolution.

W. Paxton Little, by John C. Spooner, A. L. Sanborn and H. C. Reed, his attorneys and proxies, one vote in favor of the resolution.

John W. Almy, Junior, by John C. Spooner, A. L. Sanborn, and H. C. Reed, his attorneys and proxies, one vote in favor of the resolution. 4634

Forty-three shares of stock being all of the outstanding stock of the corporation, having been voted in favor of the adoption of said resolution, the same was declared unanimously adopted.

On motion of Mr. Reed, seconded by Mr. Spooner, the following resolutions were unanimously adopted, all of the shares on a roll call voting therefor, to-wit:

"Tenth—Resolved, That of the lines of railroad which this corporation is authorized by law to construct, acquire, operate and maintain, the board of directors be, and they are hereby, authorized and instructed to cause to be immediately located upon a route satisfactory to and to be adopted by said board a railroad commencing at such point on the bay of Superior as shall be approved by said board and extending to such point or points on the Minnesota state line as the said board shall select or deem desirable, and shall also, at the same 4635

time, cause to be located a portion of the line from said point of commencement on the bay of Superior, toward Prescott, on the Mississippi river, as provided by the original charter, and the acts amendatory thereof and supplemental thereto, and the said board is authorized and instructed to provide for the immediate construction of that portion of the road as rapidly as possible from the Minnesota state line to the bay of Superior.

"Eleventh—Resolved further, That the board of directors be, and they are hereby, authorized and empowered, through the officers of the company, to cause this corporation to enter into an agreement to use or connect with the railroad of any railroad company or association built, or partly built, running in the direction of the line of railroad which this company is authorized to construct from the state line to the bay of Superior, as aforesaid, and the board of directors are duly authorized and empowered, having agreed to connect with or use any such railroad, built, or partly built, along said line, as aforesaid, to lease or purchase the same for such sum and upon such terms as to the said board shall seem wise, and as by the said board or to the executive officers of the corporation thereunto authorized by the board, shall have been agreed upon."

Upon motion of Mr. Spooner, seconded by Mr. Reed, the following resolution was adopted:

"Twelfth—Resolved, That the board of directors be, and they are hereby, authorized and instructed to cause to be fully complied with all the conditions and requirements imposed by the laws of Minnesota, North Dakota, Montana, Idaho, Washington, Oregon and the Dominion of Canada, and all the provinces thereof, to enable this corporation to acquire railroads and railroad property therein, to exercise its franchises as a railroad corporation, and to carry on the business of the same in the States or in the Dominion of Canada and of the provinces thereof."

On motion of Mr. Spooner, seconded by Mr. Reed, the following resolutions were unanimously adopted:

"Whereas, It is the purpose and intention of this company, in the exercise and accomplishment of its legal powers, to

construct or acquire and maintain and operate a railway to the Pacific coast; and 4640

"Whereas, The railroad property and franchises of the Northern Pacific Railroad Company are about to be sold under decrees of foreclosure in United States Circuit Court for the Eastern District of Wisconsin in certain proceedings therein pending between The Farmers' Loan and Trust Company and others, plaintiffs, and the Northern Pacific Railroad Company, and others, defendants, entered April 27th and April 28th, 1896; and also in pursuance of the decree ancillary thereto; and

"Whereas, Pursuant to a certain plan and agreement with the holders of the securities of the Northern Pacific Railroad Company dated March 16, 1896, Messrs. J. P. Morgan & Company, as reorganization managers under the said plan and agreement, have acquired and now hold the securities of the said Northern Pacific Railroad Company in amount constituting a very large proportionate part of the several issues of such securities, which securities the said J. P. Morgan & Company, as reorganization managers, propose to use in the purchase of the said railroad franchises and property of the Northern Pacific Railroad Company at such sale thereof under the foreclosure decrees, which upon the request of the company, and in exchange for its capital stock and bonds as hereinafter, propose to transfer such securities to this company to enable this company at such foreclosure sale to become the purchaser of the rights, property and franchises of the Northern Pacific Railroad Company; and 4641 4642

"Whereas, It is for the interest of this company to acquire and receive such securities of the Northern Pacific Railroad Company for the purpose of making use thereof to such extent as may be necessary in the purchase of the railroad property and franchises of the Northern Pacific Railroad Company; 4643

"Now, therefore, it is hereby

"Thirteenth—Resolved, That the board of directors be, and they are hereby, authorized and directed and empowered from time to time to take and to make such provisions and agreements as to them shall seem reasonable and proper to

4644 acquire securities of the Northern Pacific Railroad Company from Messrs. J. P. Morgan & Company, and also to use the same, or any part thereof, or any other funds of this company, in the purchase and acquisition of the railroad property and franchises (or any part thereof) of the Northern Pacific Railroad Company, and specifically to enter into an agreement with Messrs. J. P. Morgan & Company in the form of that now submitted to this meeting, and to be appended to the minutes thereof.

"Fourteenth—Resolved, That the president and secretary
4645 of this company be, and they are, and each of them is, hereby severally authorized and empowered to attend at the judicial sales of the rights, property, privileges and franchises of the Northern Pacific Railroad Company to be held under the decrees above mentioned, and in the name and in behalf of this company to bid for the whole or any part of of such rights, privileges, franchises and property when offered at this company to bid for the whole or any part of such company then controlled by this company and in the name and behalf of the Northern Pacific Railway Company to purchase each and every of such rights, property and franchises
4646 of the Northern Pacific Railroad Company, and in payment thereof to transfer and deliver any or all of the stocks, bonds, or other securities of the Northern Pacific Railroad Company when possessed or owned by the Northern Pacific Railway Company, and generally to do and perform all acts and execute and deliver all writings and undertakings necessary or proper to carry this resolution into effect; these powers intending to be, and being, continuing powers.

"Fifteenth—Resolved, That the by-laws of this company be, and they are hereby, amended so as in all particulars to read as the copy thereof submitted to this meeting, and to be
4647 annexed to the minutes of the proceedings thereof; and that the board of directors be, and they are hereby, authorized and directed to take all such action and proceedings as shall be necessary to fully accomplish the purpose of this resolution."

On motion, the meeting was adjourned to Monday, July 13, 1896, at 2 o'clock p. m.

A. L. SANBORN,
Chairman.

_____ _____,
Secretary.

The following is a copy of the proceedings of a meeting of 4648
the Board of Directors of the Superior & St. Croix Railroad Co. now Northern Pacific Ry. Co., held July 8, 1896, as the same appear on pages 380 to 383 of Vol. 2 of the record in the case of the United States vs. Northern Securities Co. et al, and are here offered by defendants as original evidence in this case. Marked by the Examiner Defendants' *Exhibit H.*

SUPERIOR & ST. CROIX RAILROAD COMPANY. 4649

Northern Pacific Railway Company, Directors' Meeting, July 8th, 1896.

At a meeting of the Board of Directors of the Superior & St. Croix Railroad Company, held at the office of the president in the City of New York on Wednesday, July 8th, 1896, at half past three o'clock in the afternoon, the following directors were present:

Edward D. Adams, President; W. Paxton Little, Harry B. 4650
Bodine, A. H. Gillard, John W. Almy, Jr., Walter B. Horn, Mortimer F. Smith.

In the absence of Charles F. Coaney, George H. Gardiner was appointed secretary *pro tem.*

The minutes of the meeting of the board, held October 31, 1895, were read and approved.

The resignation of Mr. Charles F. Coaney as secretary of the company was then presented, and Mr. George H. Gardiner was elected in the place of Mr. Coaney, resigned. 4651

The resignation of Mr. Charles F. Coaney as director of the company was then presented, and Mr. C. H. Coster was elected in his place.

Mr. Coster thereupon appeared and took his place as a director.

4652 The resignation of Mr. Harry B. Bodine as director of the company was presented, and Mr. F. L. Stetson was elected in his place.

Mr. Stetson thereupon appeared and took his place as director.

The resignation of Mr. Henry E. Lord as director of the company was then presented, and Mr. George H. Gardiner was elected a director in his place.

Mr. Gardiner then appeared and took his place as director.

The resignation of Mr. Walter B. Horn as director was then
4653 presented, and Mr. Victor Morawetz was elected a director in his place.

Mr. Morawetz thereupon appeared and took his place as director.

The chairman then laid before the board the minutes of the proceedings of the stockholders of the company, held July 1, 1896, at Madison, Wisconsin.

Thereupon it was unanimously

"Resolved, That the proceedings of the stockholders at their meeting of July 1, 1896, as so reported be accepted
4654 and so far as the same require the action of the board of directors, the same are hereby adopted by the board of directors of the Superior & St. Croix Railroad Company, and the Secretary is directed to append the same to the minutes of this meeting."

Upon motion, the following resolutions were unanimously adopted:

"Resolved, That the corporate name of this company be, and the same is hereby, changed from the Superior &
4655 St. Croix Railroad Company to 'Northern Pacific Railway Company,' and the latter name is hereby adopted as the corporate name of the corporation.

"Resolved, That the Secretary of the corporation be, and he is hereby, instructed to file in the office of the secretary of state, of Wisconsin, a copy of the foregoing resolution and of the record of its adoption, certified un-

der his hand and the corporate seal of the corporation, 4656
and to publish a like certified copy of said resolution for three successive weeks in The Wisconsin State Journal, the official State paper, as provided by section 1835 of the revised statutes of Wisconsin for 1878.

"Resolved, That the capital stock of this corporation be, and the same is hereby, increased from five million dollars to one hundred and fifty-five million dollars, and the same shall consist of one million, five hundred and *fifty thou*sand shares of the par or face value of one hundred dollars each, and of said stock, as the same is so 4657
hereby increased, seventy-five million dollars, or seven hundred and fifty thousand shares, shall be preferred stock, and eighty million dollars, or eight hundred thousand shares, shall be common stock; all as directed by the stockholders' meeting of July 1, 1896.

"Resolved, That the form of certificate to be issued for said common and preferred stock, and the conditions and regulations to be incorporated therein and endorsed thereon as in the judgment of the board of directors may best subserve the interests of the corporation shall be as follows:

4658

"NORTHERN PACIFIC RAILWAY COMPANY.

"Capital Stock, $155,000,000.
"Preferred Stock, $75,000,000.
"Common Stock, $80,000,000.
"Shares $100 each.

"No..... Shares.....

"This is to certify, that..... 4659
is the owner of ..... fully paid and non-assessable shares, of the par value of one hundred dollars each, in the capital stock of the Northern Pacific Railway Company, transferable only in person or by attorney upon the books of the company at its transfer office in the city of New York upon surrender of this certificate.

"The holders of the preferred stock of the company shall be entitled to non-cumulative dividends for each fiscal year, when and as declared by the board of directors of the company, to the extent of four per cent per annum, payable quarterly on the first days of March, June, September and December, out of any surplus net profits of the company as determined by said board before any dividends shall be declared or paid for or in such fiscal year on the common stock, and without deduction for any tax or taxes imposed by the United States or by any state or municipality thereof that the railway company may at any time be required to pay or to retain

"Dividends on the common stock may be declared and paid out of any surplus net profits remaining from any previous fiscal year or years for which the full dividends at the rate of four per cent per annum shall have been paid on the preferred stock; but after dividends, to the extent of four per cent, shall have been declared for any one fiscal year on all of the stock of the company (common as well as preferred), any further dividends for that fiscal year shall be declared only for the equal, ratable benefit of all the stock, whether preferred or common.

"No dividends shall be paid on the common stock out of the surplus net profits of any year for which the full dividends shall not have been paid on the preferred stock.

"Whenever the full and regular quarterly dividends for two successive quarterly periods after July 1, 1897, upon the preferred stock at the rate of four per cent per annum shall not have been paid in cash, then, and in that event at the next annual meeting such number, and only such number, of directors as will constitute a majority of the whole board shall be elected by a separate ballot by the holders of the preferred stock present or represented at such meeting, and the remainder of the board shall be elected by a separate ballot by the holders of the common stock present or represented at such meeting; in every case each share to be entitled to one vote.

"The company shall not put a mortgage upon its property formerly embraced in the system of the Northern Pacific Railroad Company, nor shall the amount of the preferred stock be increased except after obtaining, in each instance, the consent of the holders of a majority of the whole amount of the preferred stock given at a meeting of the stockholders called for that purpose, and the consent of the holders of a majority of such part of the common stock as shall be represented at such meeting; the holders of each class of stock voting separately. 4664

"The company shall have the right, at its option, and in such manner as it shall determine, to retire the preferred stock, in whole or in part, at par from time to time upon any first day of January prior to 1917. 4665

"This certificate is not valid unless registered by the Registrar of Transfers of the company in New York.

"Certificates of preferred and common stock registered in New York may be exchanged in such manner as the company may prescribe for similar certificates registered at the Deutsche Bank in Berlin, and all dividends declared on preferred stock registered in Berlin will be payable there at the rate of 4.20 marks per dollar. 4666

"In witness whereof the said company has caused this certificate to be signed by its president, or one of its vice-presidents, and its secretary or assistant secretary.

"New York, ...

"Secretary.

".....

"President.

"Entered.

"Registered.....

"Transfer Clerk, 4667

"Central Trust Company of New York,

"By....."

Whereupon the meeting adjourned until Saturday, July 11, 1896, at half past one o'clock in the afternoon.

4668

DEFENDANTS' EXHIBIT I.

BY-LAWS OF THE NORTHERN PACIFIC RAILWAY COMPANY.

(As Amended Oct. 7, 1902.)

ARTICLE I.—OF STOCKHOLDERS.

4669

SECTION 1.—ANNUAL MEETING.

A meeting of the stockholders of this company shall be held annually, on the first Tuesday of October (and, if that be a legal holiday, then on the next business day), for the purpose of electing directors, and for the transaction of such other business as may properly be brought before the meeting.

SECTION 2.—SPECIAL MEETINGS.

4670

Special meetings of the stockholders may be held whenever and as often as a majority of the board of directors or the president may deem expedient; and such majority or said president shall call such meetings upon the written request of the owners or holders of one-quarter in amount of the capital stock of the company.

SECTION 3.—NOTICE OF MEETINGS.

Written or printed notice of every meeting of stockholders
4671 shall be advertised at least once in each week for two weeks immediately preceding such meeting in one or more daily or weekly newspapers published in the cities of Milwaukee and New York, which notice shall, in general terms, state the object of the meeting. At least two weeks before such meeting, a copy of such notice shall be mailed from one of the offices of the company to each stockholder of record who shall have furnished to the company's stock transfer agents in the city

where the certificates of such stockholder shall have been issued an address to which such notice may be sent; but failure to mail any such notice shall not invalidate any action taken at such meeting, or at any adjournment thereof. 4672

SECTION 4.—QUORUM.

To constitute a meeting of stockholders for any purpose there must be present, in person or by proxy, those who can give one-third of all the votes which could be given by all stockholders entitled to vote at such meeting.

If the holders of the requisite amount of stock shall fail in person or by proxy to attend at the time and place of the meeting, pursuant to a notice duly given, those who do attend may adjourn from time to time without further notice than by announcement to be given at the meeting until holders of the requisite amount of stock shall attend. 4673

SECTION 5.—VOTING AND INSPECTORS

At all meetings of stockholders every registered owner of shares may vote in person or by proxy, and shall have one vote for every share standing in his or her name on the books of the company. At all elections of directors the voting shall be by ballot, and a majority of the votes cast thereat either in person or by proxy shall elect. 4674

The stockholders at each annual meeting shall elect two inspectors of election to serve at the next annual meeting. In case of failure so to elect, or in case of failure of any inspector so elected to act, the president or the vice-president presiding at the meeting shall fill the vacancies, but no candidate for the office of director shall be appointed to serve as such inspector. Each inspector of election, immediately before entering on the execution of his duties, shall subscribe an oath or affirmation faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability; but no failure to take or subscribe such oath or affirmation shall affect the result of any such election. The inspectors shall take charge of the polls, and after the 4675

balloting shall make a certificate of the result of the vote taken.

Any holder of proxies at any time prior to any meeting, but subsequent to the date of the closing of the transfer books, may submit his proxies for examination to the secretary or to such other officer as from time to time may be designated by the board of directors or by the executive committee; and the certificate of the secretary or other officer so designated as to the number of votes represented by such proxies, and as to the regularity thereof, shall be received as presumptive evidence thereof.

ARTICLE II.—BOARD OF DIRECTORS.

SECTION 1.—NUMBER, AND TIME OF HOLDING OFFICE.

The business, property and affairs of this company shall be managed and controlled by a board of fifteen directors. Every director shall be, at the time of his election, or before accepting and qualifying as such director, a holder of record of at least one share of the capital stock of the company; and, when he shall cease to be such holder of record, he shall thereupon cease to be a director.

The several directors shall be elected each to hold office for one year and until the election and qualification of his successor.

The stockholders may at any meeting increase or diminish the number of directors to be elected at the next annual meeting of the stockholders, and the number to be elected shall be specified in the notice of meeting, but shall never be less than five nor more than seventeen.

At all elections of directors the polls shall remain open at least one hour.

If for any cause any election of directors shall not be had on the day as prescribed in the by-laws, such election may be had on any other day after due notice as in the by-laws provided; and the directors then in office shall continue in office until their successors are duly elected and qualified.

SECTION 2.—POWERS AND DUTIES. 4680

In each year, at a meeting to be held as soon as practicable after the election of directors, the board shall elect the executive committee specified in Section 10 of this Article, and the officers specified in Section 1 of Article III hereof, and may elect or appoint such other officers and agents as they may deem necessary for the proper conduct of the company's business. All officers, agents and employees shall be removable at the will of the board, but any member present at a meeting may require such removal to be by a majority vote of the entire board. 4681

The board shall determine the compensation to be paid to all officers and agents of the company, and the amount of the bonds to be given by them.

SECTION 3.—VACANCIES.

Whenever any vacancy shall have occurred in the board or in any office, by death, resignation or otherwise, it shall be filled by the board for the remainder of the current corporate year and until the next annual election, or until a qualified 4682 successor be elected; and, in the case of a vacancy in the board, a successor shall be elected, at the next annual meeting for the election of directors, to fill such vacancy for the unexpired term of the class in which it has occurred.

If any person who shall have been elected as a director shall not, within thirty days after the date of the notice of his election, in writing, signify his acceptance of the office, the board of directors may declare a vacancy to exist in respect thereof.

4683

SECTION 4.—PLACE OF MEETING

The directors may hold their meetings and have an office or offices and keep the books of the company, without as well as within the State of Wisconsin, at such place or places as the board may from time to time determine.

4684 SECTION 5.—MEETINGS OF THE BOARD.

Meetings of the board shall be held whenever called, by direction of the president or of the vice-president, or of any three of the directors for the time being in office.

The secretary or the assistant secretary shall give notice of each meeting, by mailing the same at least two days before the meeting, or by telegraphing the same at least one day before the meeting, to each director; but such notice may be waived by any director.

4685 Unless otherwise indicated in the notice thereof, any and all business may be transacted at any meeting.

At any meeting at which every director shall be present, even though without notice, any business may be transacted.

SECTION 6.—QUORUM.

A majority of the board shall constitute a quorum for the transaction of business; but, if less than a quorum be present at any duly called meeting, a majority of those present may adjourn the meeting from time to time or *sine die*.

4686

SECTION 7.—ORDER OF BUSINESS.

At meetings of the board of directors, business shall be transacted in such order as the board may by resolution from time to time determine.

SECTION 8.—EXECUTIVE COMMITTEE.

The executive committee shall consist of six (6) directors, of whom the president, and in case of his absence from the meeting, the vice-president, shall be one *ex officio*. It shall possess 4687 and exercise all the powers of the board of directors, except when the latter is in session, but it may act only by the concurrent vote of not less than four (4) in number. It shall keep a record of all its proceedings, and the same shall be submitted to the board of directors. The executive committee shall have power to fill any vacancy in its own number, but the director so chosen shall serve as a member of the com-

mittee only until the next meeting of the board of directors, 4688
or until a successor shall have been elected by the board. The secretary, or, in his absence from the meeting, an assistant secretary, or other officer or employee of the company may act as secretary of the committee. A majority of the committee shall be a quorum. Meetings of the executive committee shall be held whenever called by the direction of the president or of the vice-president or of any two members of the committee.

The secretary or the assistant secretary shall give notice of each meeting by mailing the same, or by telegraphing the 4689
same, one day before the meeting, to each member; but such notice may be waived by any member.

Unless otherwise indicated in the notice thereof, any and all business may be transacted at any meeting.

At any meeting at which every member of the committee shall be present, even though without notice, any business may be transacted

SECTION 9.—OTHER COMMITTEES.

The board of directors, in its discretion, may appoint other 4690
or additional committees for the proper transaction of the business of the company, with such duties and powers as it shall deem proper.

ARTICLE III.—OFFICERS.

SECTION 1.—EXECUTIVE OFFICERS.

The executive officers of this company shall be a president (who shall also be a director), one or more vice-presidents (as the board from time to time may determine), a comptroller, 4691
a treasurer, an assistant treasurer, a secretary, an assistant secretary and two general counsel, one resident in New York and one resident in St. Paul.

SECTION 2.—GENERAL PROVISIONS.

Every executive officer shall perform such duties and exercise such powers as the board may from time to time direct.

No officer elected or appointed by the board shall hold executive office in any other business corporation if the board or the executive committee shall by resolution object thereto.

SECTION 3.—POWERS AND DUTIES OF PRESIDENT.

It shall be the duty of the president to preside at all the meetings of the stockholders and of the board of directors; he may sign and execute all duly authorized instruments in the name of the company; he shall have general control and direction of the business of the company, and he shall do and perform all acts and things incident to the position of president, and such other duties as may be assigned to him from time to time by the board of directors or by the executive committee.

The president shall be *ex officio* a member of all committees of the board, including the executive committee.

All executive officers shall report to the president.

SECTION 4.—POWERS AND DUTIES OF VICE-PRESIDENT AND PRESIDENT PRO TEMPORE.

In the absence or inability to act of the president, the vice-president shall perform all the duties and may exercise any of the powers of the president, subject to the control of the board of directors and of the executive committee. The vice-president shall perform such other duties as may be assigned to him, from time to time, by the board of directors, by the executive committee or by the president.

In the absence or inability to act of both the president and the vice-president, a president *pro tempore* may be appointed by the board of directors, who shall perform all the duties and may exercise any of the powers of the president, subject to the control of the board of directors and of the executive committee.

The second and any additional vice-presidents shall perform such duties as may be assigned to him or them by the president.

SECTION 5.—POWERS AND DUTIES OF COMPTROLLER.

The comptroller shall have direct charge of the general books and accounts of the company. It shall be his duty to

examine the accounts of all officers and employees and to see 4696
that the proper returns are made of all receipts from traffic and other sources, and that correct vouchers are turned over to him for all disbursements for any purpose. The comptroller shall also be the custodian of all bonds of officials and agents of the company handling funds.

SECTION 6.—POWERS AND DUTIES OF TREASURER.

It shall be the duty of the treasurer to have the care and custody of all the funds of the company which may come into his hands, and to deposit the same, as such treasurer, in such 4697
bank or banks or depository as the board may designate; he shall sign, with such other officer as may be designated for the purpose by the board, all bills of exchange, cheques and promissory notes made by the company, and he shall pay out and dispose of the same under the direction of the board; he shall render a statement of his cash account to the board of directors as often as they shall require the same; he shall enter regularly, in books to be kept by him for that purpose, full and accurate account of all moneys received and paid by him on account of this company; he shall, at all reasonable 4698
times, exhibit his books and accounts to any director of the company, upon application at the office of the company, during business hours; he shall perform all acts incident to the position of treasurer; and he shall give a bond for the faithful discharge of his duties in such sum as the board of directors may require.

SECTION 7.—POWERS AND DUTIES OF SECRETARY.

It shall be the duty of the secretary to keep the minutes of all meetings of the board of directors, in a proper book pro- 4699
vided for that purpose, and also the minutes of all meetings of the stockholders; he shall attend to the giving and serving of all notices of the company; he shall be the custodian of the seal of the company; he shall have charge of the stock record books and the blank stock certificate books (subject to the provisions of Article IV, Section 1), and of such other books and papers as the board may direct, all of which shall,

4700 at all reasonable times, be open to the examination of any director during business hours; and he shall in general perform all the duties incident to the office of secretary.

SECTION 8.—POWERS AND DUTIES OF ASSISTANT TREASURER.

In the absence or inability to act of the treasurer, the assistant treasurer shall perform all the duties, and may exercise any of the powers, of the treasurer; and he shall perform such other duties as may be assigned to him, from time
4701 to time, by the board of directors or by the executive committee.

SECTION 9.—POWERS AND DUTIES OF ASSISTANT SECRETARY.

In the absence or inability to act of the secretary, the assistant secretary shall perform all the duties, and may exercise any of the powers, of the secretary; and he shall perform such other duties as may be assigned to him, from time to time, by the board of directors or by the executive committee.

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SECTION 10.—DUTIES OF GENERAL COUNSEL.

The general counsel resident in St. Paul shall have general charge of the legal business of the company, including the designation and direction of the division, land and local counsel; and the general counsel in New York may exercise general power of supervision and advice over and through the general counsel in St. Paul, and also shall act in matters referred to him by the board of directors or the executive committee.

4703

ARTICLE IV.—CORPORATE STOCK. CORPORATE SEAL.

SECTION 1.—STOCK CERTIFICATES AND TRANSFERS.

(a.) The stock record books and the blank stock certificate books shall be in charge of the transfer agents or officers designated by the board of directors for that purpose.

The stock certificates of the company shall be in such form 4704
as the board of directors from time to time may prescribe. Each stock certificate shall be signed by transfer agents appointed by the board of directors and by some officer designated by the board of directors or by the executive committee for that purpose, and shall be countersigned by registrars of transfers appointed by the board. No new certificate shall be issued to a transferee except upon surrender and cancellation of the old certificate.

(b.) The board of directors or executive committee may make all necessary arrangements authorizing and regulating 4705
the issue and registration of stock certificates, and may provide for the issue of stock certificates in any one of the cities in which the company's stock shall be transferable, upon cancellation of certificates issued for a like number of shares in any other of the cities in which the company's stock is transferable.

(c.) The agents in charge of the transfer books shall keep such books subject to the direction of the board of directors or of the executive committee, and shall prepare for presentation to the annual meeting and to all special meetings certified lists of the stockholders of record on such books; and 4706
shall make such reports with reference to the matters in their charge as the board of directors or the executive committee may direct.

(d.) Shares of the capital stock of the company shall be transferred only upon the proper transfer books by the holder of such shares, in person or by his attorney, upon surrender and cancellation of similar certificates for a like number of shares of the same kind, having indorsed thereon or attached thereto a duly executed assignment thereof and power to transfer the same.

(e.) The stock transfer books shall be closed, as may be 4707
directed by the board of directors or by the executive committee, for a prescribed period preceding the day appointed for any annual meeting or any special meeting of the stockholders, or for the payment of a dividend; and no transfer of stock shall be made during any period so prescribed.

4708 *(f.)* No certificate of shares in the capital stock of the company shall be issued in place of any certificate alleged to have been lost or stolen or destroyed, except upon delivery to the company of a bond of indemnity to be approved by the board of directors or by the executive committee, and except also upon furnishing such evidence of such loss, theft or destruction as shall be satisfactory to the board of directors or to the executive committee.

SECTION 2.—DIVIDENDS.

4709 The board of directors may declare dividends from surplus net earnings of the company whenever they shall deem it expedient in the exercise of a sound discretion.

SECTION 3.—CORPORATE SEAL

The board of directors shall adopt a suitable seal, containing the name of the company. The secretary shall procure duplicate stamps suitable to make impressions of such seal, one of which shall be in the custody of the secretary in New
4710 York, and the other in the custody of the assistant secretary in St. Paul; and, when and as directed by special or general resolution of the board of directors, or of the executive committee, the president, any vice-president, the secretary, or any assistant secretary, may and shall use one or the other of such duplicate stamps in impressing such corporate seal upon documents, indentures and obligations of the company.

ARTICLE V.—AMENDMENTS.

The by-laws of the company, with the exception of the pro-
4711 visions of Section 1, of Article II, may be altered, amended or repealed by the vote of a majority of all the directors of the company, at any regular or special meeting of the board, provided that notice of the proposed alteration, amendment or repeal shall have been given at a previous meeting of the board.

DEFENDANTS' EXHIBIT J. 1183

DEFENDANTS' EXHIBIT J. 4712

BY-LAWS OF THE GREAT NORTHERN RAILWAY COMPANY.

ADOPTED BY THE BOARD OF DIRECTORS.

AMENDED NOVEMBER 25th, 1901.

4713

ARTICLE I.

DIRECTORS AND OFFICERS.

Section 1. The stockholders of the company, at their annual meeting, in each year, shall elect by ballot, and from their own number, three directors, each share of stock at such election being entitled to one vote, to be cast by the holder thereof in person, or by written proxy; and the persons so elected shall, together with those previously elected, 4714
whose terms of office have not yet expired, constitute the board of directors of the company.

The directors so elected shall, at their first meeting, elect by ballot, and from their own number, a president and a vice-president; and the board thus organized shall, at the same meeting, elect a secretary and a treasurer, and may, in its discretion, at the same or any other meeting duly convened, appoint an assistant secretary or an assistant treasurer, or both.

The board may also designate three of its members, of whom the president shall be one, to constitute an executive 4715
committee, and may at any meeting duly convened appoint a general solicitor, general manager, land commissioner, comptroller, chief engineer, and such superintendents or agents as it may deem necessary.

The president, vice-president, secretary, and treasurer, and the directors shall hold their respective offices for one year, and until their successors shall have been duly elected and

4716 qualified. The assistant secretary, the assistant treasurer, general solicitor, general superintendent, chief engineer, land commissioner, comptroller, and such superintendents or agents so appointed, may be removed at the pleasure of the board of directors. Any vacancy or vacancies occurring among the officers elected by the board, from death, resignation, or other cause, may be filled for the unexpired term by the board, at any meeting thereof, and any vacancy or vacancies so occurring in the board may be filled for the unexpired term by the board at the first meeting following such a va-
4717 cancy, or by the president, if no meeting is held within ten days after such vacancy.

Sec. 2. All the business and affairs of the company shall be managed and conducted by or under the direction of the board of directors, and a majority of the members of the board shall constitute a quorum for the transaction of business; but any smaller number shall be competent to adjourn *sine die*, or from day to day.

ARTICLE II.

4718 MEETINGS.

Section 1. The annual meeting of the stockholders shall be held at the general office of the company, in the city of New York, state of New York, on the second Thursday of October in each year, upon notice thereof, given by the secretary, stating the time and place of such meeting, printed in some newspaper published in said New York for ten days prior to the date of such meeting. The election of directors shall be proceeded with on said day, or such other day as such annual meeting shall or may adjourn to. The polls
4719 shall be open on the day of election from twelve (12) o'clock m. to three (3) o'clock p. m.

The secretary and two disinterested persons appointed by the president or chairman of the meeting, shall be the inspectors of election, and shall canvass the votes, and make and sign a record of the result upon the minutes of the meeting. Those stockholders, equal to the number to be elected, having the greatest number of votes, shall be deemed and

declared duly elected, and the secretary shall immediately 4720
notify the persons elected of their election; provided, that, in the election of directors, and at all other elections or meetings of the company, a majority of votes shall govern.

At such election, and in all cases in which stockholders shall vote, the votes shall be delivered in person, or by proxy duly authorized, and each share of full paid stock shall entitle the holder thereof to one vote.

Sec. 2. Unless otherwise provided by resolution adopted by the board of directors, all special meetings of the stockholders shall be held at the general office of the company in 4721
the city of New York, state of New York, and may be called by order of the board of directors, or by stockholders holding one-fourth in amount of the capital stock of the company, or by the president, on like notice as that required for annual meetings, and upon written or printed notice to each and every stockholder, to be mailed to his last known address at least ten days before the date of such special meeting, specifying the object of the meeting; and no business shall be transacted at such special meetings, except such as shall be particularly set forth in such notice, nor any vote taken unless a majority of all the stock of the company shall be then and 4722
there represented, either in person or by proxy.

Sec. 3. The first meeting of the newly constituted board shall be held at the general office of the company in St. Paul immediately after the adjournment of the stockholders' meeting on the day of their election, or at the general office of the company in the city of New York, upon eight days' notice of the time and place of meeting, given to each of the directors-elect by the president or secretary of the company. Other meetings of the board may be held upon call, or by adjournment, as hereinafter provided, at the office of the company in St. Paul, or at the office of the company in the city of New 4723
York, or at any other general office of the company that may hereafter be duly established. Such meetings may be called by the president or vice-president, on the request of two directors in writing; and without such request, may be called by the president, whenever in his judgment a meeting of the directors shall be necessary or desirable. Eight days' notice of such special meeting shall be given to each director, by de-

positing notice of the time and place of the holding of the same, in the postoffice, addressed to him at his place of residence.

Provided, however, that any other or shorter notice of any such meeting given to any director shall be deemed regular and sufficient, if accepted as such by said director.

ARTICLE III.

THE PRESIDENT AND VICE-PRESIDENT.

Section 1. The president will, when present, preside at all meetings either of the board of directors or of the stockholders. In the absence of the president, the vice-president will discharge the duties of the president. In case of the absence of both the president and the vice-president, the directors or stockholders, as the case may be, may appoint a president *pro tempore.*

Sec. 2. The president will have and exercise general supervision and control over the entire property, business, and affairs of the company. All the officers and agents of the corporation will be responsible to him for the proper and faithful discharge of their several duties, and will obey such orders and make such reports to him touching the business of the company under their respective charge as he may from time to time direct; and any superintendent, engineer, agent, or employe of the company may be suspended or discharged by him, if in his judgment there be cause for such suspension or discharge, at any time when the board of directors shall not be in session.

All leases, conveyances and instruments affecting the right of way, or other real property of the company, and all contracts with other railways relating to the use of the same, shall be signed by the president, and shall not be valid without.

All contracts requiring the corporate seal, and all certificates of stock will be signed by him or the vice-president; and he will have such other powers as are incident to the office, or may from time to time be prescribed or conferred by the board.

The vice-president, in the absence, or in case of the disa- 4728
bility, of the president, will preside at the meetings of the board of directors and of the stockholders; may sign all bonds, contracts and other instruments requiring the corporate seal, and may countersign all contracts and leases originating in the land department.

ARTICLE IV.

THE SECRETARY.

4729

The secretary will keep a record of all meetings of the stockholders and of the board of directors, and attest the same by his signature. He will have charge of all books, papers, and documents which properly belong to his office. He will sign all certificates of stock and have charge of the corporate seal, and keep the books appertaining to his office. He will keep proper stock transfer and register books, and generally perform such duties and make such reports as the board may direct. In case of his absence or disability, the assistant secretary, if any, will perform his duties, or a secretary *pro tempore* may be elected in case of the absence of both. 4730

ARTICLE V.

THE TREASURER.

The treasurer will safely keep and account for all moneys, funds, or other property which may come into his hands, keeping full and true statements of all financial transactions of the company in his books. He will give bonds, under the direction of the board, for the faithful performance of his du- 4731
ties. He will keep his accounts as treasurer, in such banks or places of deposit as the president or the board of directors may direct, and generally will render all such accounts and perform such duties as the board may direct. In case of his absence or disability, the assistant treasurer, if any, shall perform his duties.

4732

ARTICLE VI.

EXECUTIVE COMMITTEE.

The duty of the executive committee will be to superintend the transaction of the current administrative business of the company during the intervals between the meetings of the board of directors, and to conduct such other matters of business as may from time to time be committed to it by the board. Three members of the committee shall constitute a quorum for the transaction of business; and without such
4733 quorum the committee will not do or attempt any business whatever. They will record their proceedings in full in a book to be kept for that purpose; and the record of each proceeding will be signed by all the members of the committee participating therein. Such records will be open at all times to the inspection of any member of the board of directors. They will be subject to the control of the board, and they will be produced to the board for its action thereon at any meeting thereof, upon the request of any director. Any member of the board may be present at the meetings of the execu-
4734 tive committee.

ARTICLE VII.

STOCK CERTIFICATES AND TRANSFERS

All certificates for shares of the capital stock will be signed by the president or vice-president and the secretary. They will be numbered in progression, beginning with number one; and each certificate will show upon its face the number of shares for which it is issued, and that the stock therein
4735 mentioned is transferable only on the books of the company and upon the surrender of such certificate.

Upon the issuance of each certificate, an entry thereof will be ma le in a book called the "Register of Stockholders," stating the number of such certificate, the name of the stockholder, and the number of shares to which he is entitled. The transfer of any share or shares of stock may be made by the surrender of the certificate issued therefor, and a written as-

signment thereof, signed by the owner or his duly authorized 4736
attorney in fact, upon a book to be called the "Register of Transfers." Upon such surrender and assignment, a new certificate or certificates will be issued to the assignee as he may be entitled; but without such surrender and assignment no transfer of stock will be recognized by the company.

The "Register of Transfers" will be closed at least ten days before each annual meeting of the stockholders, and at such other times and for such other purposes as may be ordered by the board of directors or by the executive committee; and no assignee of shares will be entitled to vote, as such assignee, 4737
at any meeting, unless such surrender and assignment shall have been made or tendered before the time specified for the closing of said "Register of Transfers."

ARTICLE VIII.

SECOND VICE-PRESIDENT AND THIRD VICE-PRESIDENT.

In addition to the officers prescribed and required by the charter of this company, there may be a second vice-president 4738
and a third vice-president, and a fourth vice-president, who shall be elected by the board of directors in the same manner as is provided in Article I of these by-laws for the election of secretary and treasurer, and who shall hold his office at the pleasure of the board.

The board of directors may invest the respective officers provided for in this article with such powers and authority, and charge them respectively with such duties, not inconsistent with the charter of the company nor with the laws of this state, as it shall deem proper and necessary in the due and 4739
orderly conduct and management of the business and affairs of the company; and it will, by resolution, establish and clearly prescribe and define such powers, authority, and duties, and said officers will have, possess, and exercise all the authority and powers, and be charged with all the duties, thus established, defined, and prescribed.

4740

ARTICLE IX.

CHANGE OF BY-LAWS.

These by-laws, or any of them, may be added to, altered, amended, or repealed by the board of directors at any meeting thereof; and any addition, alteration, amendment, or repeal, so made, shall be valid and operative until the next annual meeting of the company thereafter, and if not disapproved at such annual meeting, will be valid and effectual to
4741 all intents and purposes as if adopted by the stockholders at such annual meeting, as well as by the board.

DEFENDANTS' EXHIBIT K.

STATEMENT OF THE NUMBER OF SHARES OF THE CAPITAL STOCK OF THE GREAT NORTHERN RY. CO. REPRESENTED
4742 AT THE ANNUAL MEETING OF THE SHAREHOLDERS OF SAID COMPANY IN EACH OF THE YEARS 1899, 1900, 1901. ALSO THE NUMBER OF SHARES OF SAID STOCK HELD BY THE PERSONS NAMED IN SAID STATEMENT AND REPRESENTED AT SAID MEETINGS, RESPECTIVELY.

	1899.	1900.	1901.
Total shares represented.....	722,852	803,258	891,916
Shares held by			
James J. Hill.....	86,836	97,879	90,279
John S. Kennedy.....	70,000	75,000	94,250
Lord Strathcona	54,000	54,000	67,500
4743 D. Willis James.....	24,150	27,665	34,081
Samuel Thorne	10,800	11,000	13,263
Geo. F. Baker.....	3,600	4,360	11,700
H. W. Cannon.....	4,200	4,620	5,000
Johnston Livingston	3,600	4,000	6,550
Jacob H. Schiff.....	300	330	.....
Kuhn, Loeb & Co.....	14,040	15,444	2,345
J. P. Morgan & Co.....	.....	.....	2,500
Lord Mount Stephen.....	.....	16,575	20,000

4744

UNITED STATES CIRCUIT COURT.
District of Minnesota,
Third Division.

STATE OF MINNESOTA,

vs.

4745

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, AND JAMES J. HILL, as President of the Northern Securities Company, and Individually.

C. Equity No. 791.

SPECIAL EXAMINER'S RETURN WITH REPORT.

4746

UNITED STATES OF AMERICA,
ss.
District of Minnesota.

I, Frederick G. Ingersoll, the duly appointed Special Examiner to take and return the testimony in the case of the State of Minnesota, Complainant, vs. Northern Securities Company, Great Northern Railway Company, Northern Pacific Railway Company, and James J. Hill, as President of the 4747
Northern Securities Company, and individually, Defendants, do hereby certify that pursuant to the notice of taking testimony made, given and served by me upon the attorneys for the respective parties to this action, dated October 18th, 1902, and set forth on pages 7 and 8 of Volume I of this printed record, I appeared on the 29th day of October, 1902, at 10

o'clock in the forenoon, at the United States District Court Room in the Federal Building, in the City of St. Paul, Minnesota, and was then and there attended by the solicitors for the respective parties to said cause, and did then and there, at said time and place, and at certain other times and places in said report mentioned, take and report all the testimony of all the witnesses produced before me by all the parties to this cause, as well as all proceedings connected therewith; that at all said times and places each of the several witnesses, being of lawful age, before testifying was by me duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth relative to the matters in controversy in this cause.

That pursuant to the authority in me vested by the order appointing me Special Examiner in this cause, having first taken and filed my oath as Examiner herein, I did on the 8th day of November, 1902, appoint Robert S. Taylor, a competent stenographer, to take down under my direction, stenographically, thereafter to put into typewriting, the testimony of the witnesses produced before me, and that said Taylor accepted said appointment and took the oath of office thereof, and did take down stenographically and transcribe into typewriting the testimony of said witnesses; that by agreement of the parties, the reading to each witness his testimony, after reduction to typewriting, by the Examiner, in the presence of the parties or counsel, was duly waived, it being understood and agreed that each witness should read over his testimony in the presence of the Examiner, and after correcting the same to conform to the facts, should thereafter sign and swear to the same before the Examiner. That this course was pursued as to each and every witness produced before said Examiner, save and except as to the witnesses Theodore F. Koch, S. A. Hoyt, Franklin Benner, W. P. Christensen, Charles F. Staples, Francis Lynde Stetson, Thomas C. Shotwell, witnesses for and in behalf of complainant, and W. P. Clough, as to the testimony of said Clough taken before the Examiner in the City of New York, January 16, 1903, in behalf of defendants, as to which testimony it was expressly stipulated and agreed the reading by said witnesses

and signing and verifying the same, should be and was duly waived; 4752

That all of the testimony of the witnesses James J. Hill, C. S. Mellen, Charles Steele, J. Pierpont Morgan, and certain of the testimony of the witnesses W. P. Clough, John S. Kennedy and George W. Perkins, introduced by and on behalf of the complainant in this cause, was testimony stipulated into the record from the record of the testimony of said witnesses given before me in the cause entitled The United States vs. Northern Securities Company et al; that the testimony of the defendants' witnesses James J. Hill, George B. Harris, Charles S. Mellen, and E. N. Saunders, was testimony stipulated into the record on behalf of the defendants from the record in the same cause; 4753

That the report to which this certificate is affixed contains a full, true and complete record of all the testimony taken, exhibits introduced and proceedings had at such times and places before me; that the exhibits offered by the solicitors for the complainant, as well as those offered by the solicitors for the defendants, are filed by me with this report in the office of the Clerk of the United States Circuit Court for the District of Minnesota; that the exhibits introduced by the complainant were marked as follows: Complainant's Exhibit 1, Complainant's Exhibit 2, Complainant's Exhibit 3, Complainant's Exhibit 4, Complainant's Exhibit 5, Complainant's Exhibit 6, Complainant's Exhibit 7, Complainant's Exhibit 8, Complainant's Exhibit 9, Complainant's Exhibit 10, Complainant's Exhibit 11, Complainant's Exhibit 12, Complainant's Exhibit 13, Complainant's Exhibit 14, Complainant's Exhibit 15, Complainant's Exhibit 16, Complainant's Exhibit 17, Complainant's Exhibit 18, Complainant's Exhibit 19, Complainant's Exhibit 20, Complainant's Exhibit 21, Complainant's Exhibit 22, Complainant's Exhibit 23, Complainant's Exhibit 24, Complainant's Exhibit 25, Complainant's Exhibit 26, Complainant's Exhibit 27, Complainant's Exhibit 28, Complainant's Exhibit 29, Complainant's Exhibit 30, Complainant's Exhibit 31; that the exhibits introduced by the defendants were marked by me, Defendants' Exhibit A, Defendants' Exhibit B, Defendants' Exhibit C, Defendants' Exhibit D, Defendants' Exhibit E, Defendants' 4754 4755

4756 Exhibit F, Defendants' Exhibit G, Defendants' Exhibit H, Defendants' Exhibit I, Defendants' Exhibit J, Defendants' Exhibit K;

That whatever copies of originals appear among said exhibits, it was expressly stipulated and agreed by the solicitors for the respective parties that such copies might stand for and be used as the originals thereof as fully and completely as if the originals were filed.

IN WITNESS WHEREOF, I have hereunto set my hand this ——— day of April, A. D. 1903.

4757 .....,
Special Examiner.

UNITED STATES CIRCUIT COURT,
District of Minnesota,
Third Division.

STATE OF MINNESOTA,

4758 vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually.

C. Equity, No. 791.

CLERK OF COURT'S CERTIFICATE TO EXAMINER'S
4759 REPORT.

UNITED STATES OF AMERICA,

ss.

District of Minnesota.

I, Henry D. Lang, Clerk of the Circuit Court of the United States for the District of Minnesota, do hereby certify that I

have carefully compared the foregoing paper writings, namely, 4760
order appointing special examiner, oath of examiner, order appointing stenographer, oath of stenographer, notice of taking testimony, proceedings before examiner commencing on the 29th day of October, 1902, the testimony of the witnesses George A. Flinn, George D. Rogers, S. A. Kemp, James J. Hill, W. P. Clough, E. T. Nichols, John S. Kennedy, George F. Baker, Samuel Thorne, all as set forth in Volume I. of the printed record herein; the testimony of the witnesses D. Willis James, George W. Perkins, Charles Steele, J. Pierpont Morgan, E. H. Harriman, C. S. Mellen, Darius Miller, George B. Harris, Francis Lynde Stetson, Thomas C. Shotwell, A. J. 4761
Wright, Louis T. Stodder, S. P. Robertson, Frank A. Weld, O. C. Beck, Addison Leech, Ewald Weidemann, Johnston Wagner, Theodore F. Koch, S. A. Hoyt, Franklin Benner, W. P. Christensen; Complainant's Exhibit 1 to Complainant's Exhibit 31, both inclusive, all as set forth in Volume II. of the printed record herein; the testimony of the witnesses James J. Hill, Frederick Weyerhaeuser, George B. Harris, C. S. Mellen, E. N. Saunders and W. P. Clough, together with the defendant's exhibits marked A, B, C, D, E, F, G, H, I, J and K, all as set forth in Volume III. of the printed record herein; to- 4762
gether with all the other proceedings, stipulations and matters and things set forth in said Examiner's report, and I find, after making such comparison of said paper writings with the originals thereof in my custody as Clerk of this Court, that the foregoing are true copies of the originals and of the whole thereof on file in this cause, and that the contents of said Volumes I., II. and III. correctly set forth all the proceedings, testimony and exhibits had and taken in said cause before said Frederick G. Ingersoll, Special Examiner herein, as the same is shown by the original report of such Examiner on file in my office. 4763

....., Clerk, United States Circuit Court,

(Seal of Court) District of Minnesota.

4764

UNITED STATES CIRCUIT COURT,
District of Minnesota,
Third Division.

STATE OF MINNESOTA,

vs.

4765

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, and JAMES J. HILL, as President of the Northern Securities Company, and Individually.

C. Equity No. 791.

4766 SPECIAL EXAMINER'S CERTIFICATE FOR PRINTED RECORD.

UNITED STATES OF AMERICA,
ss.
District of Minnesota.

4767 I, Frederick G. Ingersoll, the duly appointed Examiner to take and return the testimony in the case of the State of Minnesota vs. Northern Securities Company et al, defendants above named, do hereby certify that pursuant to the notice of taking testimony made, given and served by me upon the attorneys for the respective parties to this action, dated October 18th, 1902, and set forth on pages 7 and 8 in Volume I. of this printed record, I appeared on the 29th day of October, 1902, at 10 o'clock in the forenoon, at the United States

District Court room in the Federal Building, in the City of 4768
St. Paul, Minnesota, and was then and there attended by the solicitors for the respective parties to this cause, and did then and there, at said time and place, and at certain other times and places in said report mentioned, take and report all the testimony of all the witnesses produced before me by all the parties to this cause, as well as all the proceedings connected therewith; that at all said times and places, each of the several witnesses, being of lawful age, before testifying, was by me duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth relative to the mat- 4769
ters in controversy in this cause.

That pursuant to the authority in me vested by the order appointing me Special Examiner in this cause, I appointed Robert S. Taylor, a competent stenographer, to take down, under my direction, stenographically, and thereafter to put into typewriting, the testimony of the witnesses produced before me, and that said Taylor duly qualified, accepted and performed the duties incident to said appointment, that thereafter, and on the ——— day of April, A D. 1903, I filed in the office of the Clerk of this Court, a complete transcript of all such proceedings had and taken before me, together with all 4770
the exhibits introduced in evidence by every party to this cause, together with my certificate and return thereof as by law required; that said report is now on file in the office of the Clerk of this Court.

I further certify that at the request of the parties to this cause, I have caused all the proceedings before me as such Examiner to be printed and bound as provided by the rules of this Court; that the printed record of such proceedings comprises Volumes I., II. and III.; that I have carefully compared all of the proceedings before me as such Examiner, together with the testimony of all of the witnesses taken by 4771
me, as well as all the exhibits introduced in said cause by the complainant, and all the exhibits introduced by the defendants, with the originals thereof, as set forth in my report, and that the same, as set forth in said Volumes I., II. and III. is a true and correct copy and transcript of the originals and all thereof, as the same are on file in the office of the Clerk of this

4772 Court; that said Volumes I. and II. contain all of the proceedings had and taken before said Examiner by and on behalf of the complainant herein, including all exhibits introduced on behalf of the complainant; that said Volume III. contains all the proceedings, testimony and exhibits had and taken before me by and on behalf of the defendants, together with the Examiner's return to the original report, the Clerk's certificate thereof, and this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this ——— day of April, A. D. 1903.

4773 .....,

Special Examiner.

FILE COPY. 30250

433

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1903.

Office Supreme Court U. S.
FILED
OCT 26 1903
JAMES H. McKENNEY,
Clerk.

STATE OF MINNESOTA,

Complainant—Appellant,

vs.

THE NORTHERN SECURITIES COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, AND JAMES J. HILL, AS PRESIDENT OF THE NORTHERN SECURITIES COMPANY AND INDIVIDUALLY,

Defendants—Appellees.

NOTICE OF MOTION TO ADVANCE, MOTION, AND POINTS IN SUPPORT THEREOF.

M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

W. B. DOUGLAS,
Attorney General,
Attorney for Complainant and Appellant.

30251

SUPREME COURT OF THE UNITED STATES.

STATE OF MINNESOTA,

Complainant-Appellant.

vs.

THE NORTHERN SECURITIES COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, and JAMES J. HILL as President of the Northern Securities Company and individually,

Defendants-Appellees.

MOTION.

Now comes the State of Minnesota by Wallace B. Douglas, Attorney General thereof, and moves the Court to advance the hearing in the above entitled action upon the docket and set the same for argument on the fifteenth day of December, 1903, or at such other time as shall be designated by the Court.

WALLACE B. DOUGLAS,
Attorney General,
Attorney for Complainant and Appellant.

M. D. MUNN.
GEO. P. WILSON.
Counsel.

SUPREME COURT OF THE UNITED STATES.

STATE OF MINNESOTA,

Complainant-Appellant.

vs.

THE NORTHERN SECURITIES COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, and JAMES J. HILL as President of the Northern Securities Company and individually,

Defendants-Appellees.

POINTS IN SUPPORT OF FOREGOING MOTION.

The request for an advancement upon the docket and early hearing of the above entitled action is based upon the following grounds:

1. That the case of the United States against the Northern Securities Company, the Great Northern Railway Company, the Northern Pacific Railway Company, James J. Hill and others, which has been set for argument in this court on the fourteenth day of December, 1903, involves, as does this action, the purpose and validity of the organization, as well as the validity of the acts of the Northern Securities Company in acquiring a very large majority of the stock of the Northern Pacific and Great Northern Railway Companies; said companies being the owners of and operating parallel and competing lines of railway situated in Minnesota and extending westward therefrom to the Pacific coast.

2. That it appears from the printed record that most of the evidence taken in this case is a duplicate of and was taken pursuant to the stipulation of counsel from the record of the case of the United States vs. the Northern Securities Company, et al., above referred to.

3. The questions of fact involved in the two cases are practically identical, and the questions of law in many particulars similar; and inasmuch as the record is voluminous (containing upwards of twelve hundred pages), a great saving of time of the Court will result, not only in the inspection of the record, but in the arguments involving questions of fact.

4. That the questions at issue present alleged violations of the laws and public policy of the State of Minnesota, as well as the validity of such enactments, which are of the greatest importance to the citizens of Minnesota. The principal difference between the suit brought by the United States and that brought by the State of Minnesota is that in the latter case the State seeks to enforce its laws prohibiting the consolidation of parallel and competing lines, as well as its laws prohibiting the formation of trusts and combinations in restraint of trade. The state also seeks to avail itself of the provisions of the federal statutes upon the same subject. In the federal case the United States seeks to enforce the federal statutes prohibiting combinations and contracts in restraint of trade.

5. That it is of the utmost importance to the State of Minnesota and its citizens to have a speedy determination of the questions involved in this action, so that it may know what its rights are in relation to the two defendant railway companies. Some of the other states, through which pass the lines of railway operated by the two defendant companies, are equally interested in the determination of the questions involved in this action; and one of said states,

to-wit, the State of Washington, now has an action pending in this Court involving the rights of that State against the same defendants. No testimony has yet been taken in that action, and the determination of the issues involved in this case will dispose of the issues involved in the action brought by the State of Washington, thus saving the time and expense of litigating that action.

All of which is respectfully submitted.

WALLACE B. DOUGLAS,
Attorney General,
Solicitor for Appellant.

M. D. MUNN.
GEORGE P. WILSON.
Of Counsel.

SUPREME COURT OF THE UNITED STATES,

October Term, 1903.

STATE OF MINNESOTA,

Complainant-Appellant.

vs.

THE NORTHERN SECURITIES COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, and JAMES J. HILL as President of the Northern Securities Company and individually,

Defendants-Appellees.

To Messrs. George B. Young, Attorney for Northern Securities Company, James J. Hill, personally and as President of the Northern Securities Company, M. D. Grover, Attorney for the Great Northern Railway Company, and C. W. Bunn, Attorney for the Northern Pacific Railway Company, Attorneys for Appellees.

Please take notice that on Monday, the 2d day of November, 1903, at the opening of the court, or as soon thereafter as counsel can be heard, the motion of which the foregoing is a copy, will be submitted to the Supreme Court of the United States for the decision of the said Court thereon. Annexed hereto is a copy of the brief of argument to be submitted with the said motions in support thereof.

WALLACE B. DOUGLAS,
Attorney General,
Solicitor for Appellant.

M. D. MUNN.
GEORGE P. WILSON.
Of Counsel.

STATE OF MINNESOTA, }
COUNTY OF RAMSEY. } ss.

W. J. Donahower, being first duly sworn, deposes and says, that at the City of St. Paul, County of Ramsey, and State of Minnesota, on Monday, the 19th day of October, A. D. 1903, he served the annexed notice of motion, motion and points upon which the same is based, in the case of State of Minnesota, Complainant, vs. The Northern Securities Company, Northern Pacific Railway Company, Great Northern Railway Company, and James J. Hill as President of the Northern Securities Company and individually, Defendants, upon C. W. Bunn, attorney for the Northern Pacific Railway Company, by handing to and leaving with H. L. Donahower, the person in charge of the office of the said attorney, a true and correct copy of the same; and upon M. D. Grover, attorney of the Great Northern Railway Company, by handing to and leaving with Earl W. McElroy, the person in charge of the office of the said attorney, a true and correct copy of the same; and upon George B. Young, attorney for the Northern Securities Company, James J. Hill, personally and as President of the Northern Securities Company, by handing to and leaving with E. L. Young, the person in charge of the office of said George B. Young, a true and correct copy of the same.

W. J. DONAHOWER.

Subscribed and sworn to before me, this 20th day of October, A. D. 1903.

V. O. BRAGGANS,
Notary Public, Ramsey County, Minn.

(Notarial Seal.)

30256

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 433.

STATE OF MINNESOTA, COMPLAINANT, APPELLANT,

vs.

THE NORTHERN SECURITIES COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, AND JAMES J. HILL, AS PRESIDENT OF THE NORTHERN SECURITIES COMPANY AND INDIVIDUALLY, DEFENDANTS, APPELLEES.

COMPLAINANT'S POINTS IN REPLY ON MOTION TO ADVANCE.

A motion to advance is granted for special and peculiar reasons shown. The facts and circumstances of the case control, not the conclusions drawn by counsel.

Reasons for advancing this case are set forth in the points heretofore filed in support of the motion.

As to the extent of the duplication of the voluminous records of these two cases we respectfully invite an inspection thereof by the court.

Sufficient reasons for advancing the case have, we believe, been shown.

In Haye *vs.* R. R. Co., 93 U. S., 2, the court stated the reason for advancing the Illinois tax cases as follows:

"The question was as to the constitutionality of the law under which all the property of railroad corporations in that State was taxed. The courts of the State had decided in favor of the validity of the law and the circuit court of the United States against it. They are class cases and their determination would dispose of many other suits of the same character then pending in the circuit court, in which interlocutory injunctions had been allowed. In addition to this it was shown that the action of the circuit court in granting such injunctions practically suspended not only the enforcement of the revenue laws of Illinois against railroad corporations, but the collection of the taxes assessed upon the capital stock and franchises of all other corporations in the State except so far as such corporations voluntarily pay such taxes. Under such circumstances it is easy to see that questions of great public interests were involved and that the operations of the government of the State would be embarrassed so long as they remain undetermined by this court. Sufficient reason was shown and the causes were accordingly advanced."

Corresponding reasons may be urged that pending a decision on the merits of this cause, Minnesota as a sovereign State will be embarrassed in its governmental operations, since enforcement of the laws involved will be practically suspended. The State legislature in passing these laws has determined conclusively that the interests of all the people of the State demanded their enactment and enforcement.

Replying to one certain suggestion made in opposition to the motion, we submit that if the Federal case should be decided in favor of the Government, the State case should also be heard and determined, so that the State may know its rights under its present laws in the event that other railroads within the State should attempt to consolidate or acquire control of parallel or competing lines within the State, and also in order that the State may know its rights and prevent any control of these railroads, which if not in viola-

tion of the National Anti-trust act might be in violation of either one or both of the State acts.

Counsel suggest on page 3 of their objections "that it is not material to inquire on what grounds the circuit court took jurisdiction." We concede that it is not material on this motion to advance, and hence maintain that all suggestions on the subject of jurisdiction are immaterial and should be wholly disregarded at this time.

It is sufficient upon this preliminary motion that the circuit court maintained jurisdiction and no argument should be considered when neither a full discussion would be possible nor under the rules would one be entertained; while to determine what the circuit court did or did not decide would necessitate a consideration of the entire subject matter of the controversy.

We suggest that if counsel will be prepared to present the jurisdictional feature as soon as the rules permit, they will be equally well prepared to discuss the merits December 15, or as soon thereafter as the court may determine.

Elaborate and exhaustive arguments were prepared and made in the court below by both sides and a discussion of the matter of jurisdiction in this case will entail a discussion of practically all points necessary to a determination of the merits.

We strongly contend that any argument touching the jurisdiction is inadmissible, except after due notice, and so certainly inadmissible on this motion, yet, since reference has been made to it as an alleged ground for denying the motion, we reply with a few counter-suggestions, which in turn are material here only so far as these jurisdictional suggestions of counsel are material.

Appellant seeks to enforce article 4 of the Constitution of the United States and its rights thereunder; to avail itself of the National Anti-trust act; it claims that original jurisdiction exists in the Federal courts to hear and determine

this cause; while defendants themselves claim that an enforcement of the laws of Minnesota invade rights guaranteed to them under the Federal Constitution.

By the terms of the Judiciary act, page nine hundred and three, volume one, of Supplement I, appeal lies directly to the Supreme Court "in any case that involves the construction or application of the Constitution of the United States," or "in any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States." Complainant, in paragraph 11 of its complaint, after charging the acts of the defendants, alleges that if said Northern Securities Co. is allowed to hold and control the stocks of said railway companies, and to carry out the purpose and object of its incorporators as well as its own, full faith and credit will not be given to the public acts of this complainant, and it will be deprived of a further right guaranteed to it by the Constitution of the United States.

Each of the defendants in paragraph seven, pages sixty-four, seventy-two, and eighty-two of Record, of their various answers, in referring to the statutes of Minnesota which complainant pleaded in its bill of complaint, alleges that "these statutes are in violation of the Constitution of the United States."

Thus it appears that both the complainant and all the defendants asserted rights dependent upon the true construction of and guaranteed by the Constitution of the United States. Each of these questions was argued by counsel for the respective parties to the trial court, and while the court in its decision may not have placed the same upon the respective grounds urged by counsel, or may have entirely ignored the questions, still it is insisted that constitutional questions were not only presented, but that this controversy, from the standpoint of all parties, will of necessity again involve them when the facts are found in accordance with the evidence, and the statutes of Minnesota

are correctly construed, and that these questions are necessarily involved in the appeal.

Again, the defendants removed the cause from the district court of Ramsey county, Minnesota, to the circuit court of the United States upon the ground that "this action arises under the Constitution and laws of the United States, and more especially under the eighth section of the first article of the Constitution and the fourteenth amendment thereto and the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and that the title and right on which the said action depends and is based and on which a recovery for the plaintiff depends will be defeated by one construction of the Constitution or said law, and sustained by an opposite construction" (Record, page 47).

Diverse citizenship did not enter into the removal; therefore, under the rule adopted in Union and Planters' Bank *vs.* Memphis, 189 U. S., 71, an appeal lies directly to this court.

Defendants having removed to the Federal court on ground that constitutional questions are involved, they are now estopped from denying it.

Crowley *vs.* Northern Pacific, 159 U. S., 583.
Mastin *vs.* Railway Company, 123 Federal, 827.

The State desires to be heard orally on any motion to dismiss appeal, and this is an additional reason why the cause should be advanced, so that such argument may be had at the hearing on the merits, as provided in rule 6.

Again, the record, not the assignments of error, must be consulted as indicating all the questions involved in the litigation. The assignments barely point out those errors claimed to have been committed which tell against the appellant.

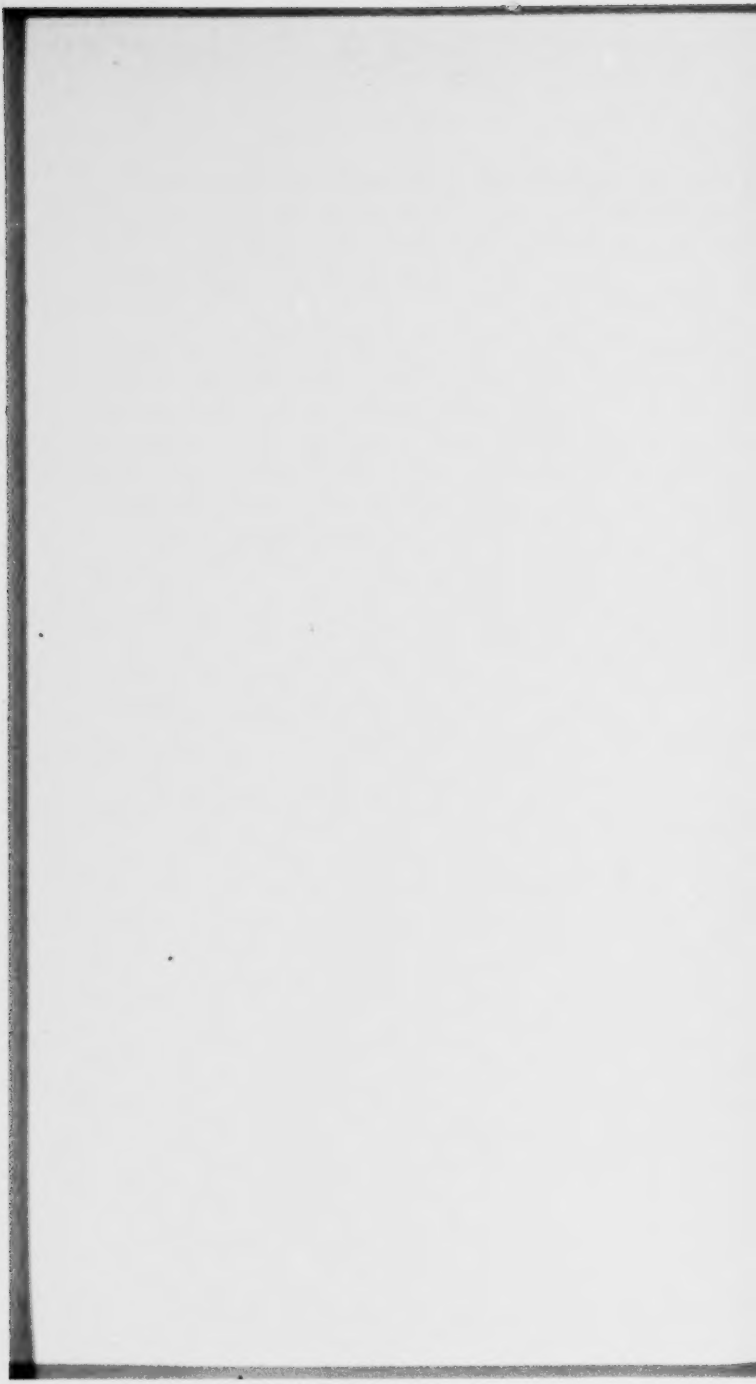
We submit that an *intention* to move to dismiss is not sufficient to defeat this motion to advance. We suggest that it will be of very great assistance to the court and counsel and of much benefit to the people of Minnesota and of the entire country if these two cases are heard within a short time of each other. We reply that the appeal ought not to be dismissed, if motion be made to that end; that a consideration of the jurisdictional feature in advance will necessitate a subsequent hearing of the merits, and it is the hearing on the merits for which we seek an early opportunity, while the exhaustive discussion of the Federal case will be fresh in the minds of the court and of counsel.

Respectfully submitted.

WALLACE B. DOUGLAS,
Attorney General,
Solicitor for Appellant.

M. D. MUNN,
GEORGE P. WILSON.
Of Counsel.

30259



Supreme Court of the United States.

OCTOBER TERM, 1908.

STATE OF MINNESOTA,

Appellant,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, JAMES J. HILL, as President of the Northern Securities Company and individually,

Appellees.

BRIEF OF APPELLANT IN OPPOSITION TO MOTION TO DISMISS.

W. R. DOUGLAS,
Attorney General.
M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

30261

Supreme Court of the United States.

OCTOBER TERM, 1903.

STATE OF MINNESOTA,

Appellant,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, JAMES J. HILL, as President of the Northern Securities Company and individually,

Appellees.

BRIEF OF APPELLANT IN OPPOSITION TO MOTION TO DISMISS.

STATEMENT OF FACTS.

The appellees in this action move a dismissal of his appeal, "for the reason that the same having been taken directly to this court is not authorized by law," and as they say "the sole question is whether, under section 5, a direct appeal can be taken from

the Circuit Court to this Court." (See pages 3 and 4 of Appellees' Brief).

This action was begun by the State in the District Court of Ramsey County, Minnesota; and the bill of complaint sets forth in full the Articles of Incorporation of the Northern Securities Company under the laws of New Jersey. (See Fol. 9, page 3a of record). Also the laws of the State of Minnesota, which are claimed to be violated by and through such corporation, and which are sought to be enforced in this action. (See Fols. 86 to 96 inclusive, pages 22a to 24a of the record).

The bill also alleges that the Northern Securities Company was organized for the express purpose of evading and violating the laws of the State of Minnesota; and that if allowed to carry out its purpose and object, full faith and credit will not be given to the public acts of this appellant; and it will be deprived of the rights guaranteed to it by the constitution of the United States. (See Fols. 97 to 102, pages 25a and 26a of the record; also Fols. 128 to 137 inclusive, pages 32a to 35a of the record).

The bill also alleges that the acts complained of were in violation of the Act of Congress, approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies"; and the appellant seeks to avail itself of this Federal statute in this suit; the appellant having alleged in its bill that it owns and maintains various charitable institutions as a state, and is a large individual shipper over the lines of railway in question, and will be deprived of rights, as such

shipper, which are secured to it by said Federal anti-trust act, unless granted the relief prayed for in its bill. (Fols. 69 to 77, pages 19 and 20a and Fols. 144 to 147, pages 36 and 37a of record).

After the bill was filed in the State Court, all of the defendants filed a petition for removal to the Federal Court. In this petition they allege:

"That this action arises under the constitution and laws of the United States and more especially under the eighth section of the first article of the constitution and the fourteenth amendment thereto, and the Act of Congress entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, and that the title and right on which the said action depends and is based, and on which a recovery by plaintiff depends, will be defeated by one construction of the Constitution or said law, and sustained by an opposite construction, in this:

That said complaint alleges a combination among the defendants for the purpose of monopolizing, and which, as is alleged, does monopolize commerce among the states of the Union, as well as within the State of Minnesota, and sets forth the provisions of a statute of said State which forbids every contract or combination in restraint of trade or commerce between any of the people of said State and any of the people of any other state or country, and which prohibits and declares unlawful any union or combination to which a corporation of said state is a party, the purposes or effect of which is to control or monopolize in any manner, the trade or com-

merce, or any part thereof, of the several states.

And the complaint alleges that the said combination and monopoly of traffic among the states have been effected by the defendants in violation of said State statute, and also in violation of said Act of Congress of July 2, 1890.

And the complaint prays that it be adjudged that the said combination and agreement and all acts done and to be done thereunder are in violation of said State statute and said Act of Congress, and that plaintiff may thereupon, and because of such adjudged violation, have the relief specially prayed and also general relief." (See Fols. 188 to 191, pages 47a and 48a of the record).

This action was thereupon, by order of court, transferred to the United States Circuit Court for the District of Minnesota. (Fol. 211, page 53a of the record).

Each of the appellees then appeared in said Circuit Court and filed their answers, and each therein made the following claim:

"They deny that the settled and public policy of the State of Minnesota has been to prohibit in any way the consolidation of competing or parallel lines of railway, and say that until the year 1874, which was long after the land grants mentioned in the bill and after the construction of a large portion of the railways of both said Great Northern and Northern Pacific companies, there was no law in Minnesota on the subject; and deny that there is or ever has been any policy or law in said state except such policy as is expressed in the statutes pleaded in paragraph X of the bill, and these statutes the defendants say are in violation of the constitution of the United States." (See Fols. 52-53, pages 63a and

64a of the record; Fols. 288-289, pages 72a and 73a of the record; also Fol. 326, page 82a of the record).

Testimony was taken and the action tried by the court, and a decree entered against the appellant, on the ground among others that the acts complained of in the bill, and as shown by the testimony, did not constitute a violation of the laws of the State of Minnesota sought to be enforced, or of the Federal statute referred to, and that appellant possessed no rights thereunder. Thereupon an appeal was taken to this court.

ARGUMENT.

The appellant being a sovereign state, there is no diversity of citizenship within the meaning of the constitution or the various judiciary acts relating to the Federal courts; therefore the jurisdiction of the Circuit Court rested solely on the ground that the suit is one which involves a dispute or controversy as to a right which depends on the construction or application of the constitution, and a law of the United States. Such being the case, an appeal can be taken only directly to this court, under section 5 of the Circuit Court of Appeals' act of March 3, 1891.

After the cause had been removed to the Circuit Court and the jurisdiction of that court became fixed for the reasons above stated, each of the appellees appeared, and in their respective answers "*claimed*" that the legislative acts of the appellant sought to be enforced are in contravention of the Constitution of the United States; so that in addition to the consti-

tutional questions and rights under Federal statutes asserted by the appellant, the appellees also *claimed* rights under the constitution of the United States, which also brings this appeal clearly within section five of said Court of Appeals act.

It seems to us that in construing the Circuit Court of Appeals act, this court has settled two things:

FIRST: THAT IN ANY CASE IN WHICH THE JURISDICTION OF THE CIRCUIT COURT RESTS SOLELY UPON THE GROUND THAT THE SUIT IS ONE WHICH INVOLVES A DISPUTE OR CONTROVERSY AS TO A RIGHT WHICH DEPENDS ON THE CONSTRUCTION OR APPLICATION OF THE CONSTITUTION, OR SOME LAW OR TREATY OF THE UNITED STATES, THE APPELLATE JURISDICTION OF THIS COURT IN RESPECT THERETO IS EXCLUSIVE.

In the case of *American Sugar Refining Company v. New Orleans*, 181 U. S. page 277, this court said:

"The intention of the act in general was that the appellate jurisdiction should be distributed, and that there should not be two appeals, but in cases where the decisions of the Courts of Appeals are not made final it is provided that 'there shall be of right an appeal or writ of error or review of the case by the Supreme Court of the United States where the matter in controversy exceeds one thousand dollars besides costs.'

"And the right to two appeals would exist in every case, (the litigated matter having the requisite value) where the jurisdiction of the Circuit Court rested solely on the ground that the suit arose under the Constitution, laws or treaties of the United

States, if such cases could be carried to the Circuit Court of appeals, for their decisions would not come within the category of those made final.

"As, however, a case so arises where it appears on the record, from plaintiff's own statement, in legal and logical form, such as is required by good pleading, that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction or application of the Constitution, or some law, or treaty of the United States, (*Gold Washing & Water Co. v. Keyes*, 96 U. S. 199; *Blackburn v. Portland Gold Mining Co.*, 175 U. S. 571; *Western Union Telegraph Co. v. Ann Arbor Railroad Company*, 178 U. S. 239; and as those cases fall strictly within the terms of section five, the appellate jurisdiction of this court in respect to them is exclusive."

This was reaffirmed in the case of *Huguley Mfg. Co. v. Galeton Cotton Mills*, 184 U. S. page 290 in the following language:

"If the jurisdiction of the Circuit Court rests solely on the ground that the suit arises under the Constitution, laws or treaties of the United States, then the jurisdiction of this court is exclusive, but if it is placed on diverse citizenship, and also on grounds independent of that, then if carried to the Court of Appeals, the decision of that court would not be made final, and appeal or writ of error would lie. American Sugar Refining Company v. New Orleans, 181 U. S. 277."

And again in case of Union & Planters' Bank v. Memphis, 189 U. S. page 71.

SECOND: THAT IN ANY CASE WHERE THE JURISDICTION OF THE CIRCUIT COURT RESTS ON DIVERSITY OF CITIZENSHIP, AND THE CASE INVOLVES THE CONSTRUCTION OR APPLICATION OF THE CONSTITUTION OF THE UNITED STATES, OR IN WHICH THE CONSTITUTION OR LAW OF A STATE IS "CLAIMED" TO BE IN CONTRAVENTION OF THE CONSTITUTION OF THE UNITED STATES, THEN AN APPEAL MAY BE TAKEN DIRECTLY TO THIS COURT, AND IT MAKES NO DIFFERENCE WHICH OF THE PARTIES TO THE SUIT MAKES THE CLAIM THAT SUCH STATE CONSTITUTION OR LAW IS IN CONTRAVENTION OF THE CONSTITUTION OF THE UNITED STATES.

In the case of Loeb v. Columbia Township Trustees, 179 U. S. page 472, this Court said:

"By the fifth section of the Circuit Court of Appeals Act of March 3, 1891, appeals or writs of error may be prosecuted to this court from the Circuit Courts 'in any case in which the constitution or law of a state is claimed to be in contravention of the Constitution of the United States.' 26 Stat. 826, 827, c. 517. The petition shows that the parties are citizens of different States. It states no other ground of Federal jurisdiction. If nothing more appeared bearing upon the question of jurisdiction, then it would be held that this court was without authority to review the judgment of the Circuit Court.

Is not this court, however, sufficiently informed by the record that the defendant township, under its general demurrer, 'claimed' in the Circuit Court that the statute of Ohio by the authority of which the bonds were issued was in contravention of the Constitution of the United States?

It is said that even if the record shows such a claim to have been made it will not avail the plaintiff; for, it is argued, when the jurisdiction of the Circuit Court is invoked by the plaintiff only on the ground of diverse citizenship, a claim by the defendant of the repugnancy of a state law to the Constitution of the United States is not sufficient to give this court jurisdiction, upon writ of error, to review the final judgment of the Circuit Court sustaining such claim. Such an interpretation of the fifth section is not justified by its words. Our right of review by the express words of the statute extends to 'any case' of the kind specified in the fifth section. And the statute does not in terms exclude a case in which the Federal question therein was raised by the defendant. That section differs from section 709 of the Revised Statutes relating to the review by this Court of the final judgment of the highest court of a State in this, that under the latter section we can review the final judgment of the state court upon writ of error sued out by the party who is denied a right, privilege or immunity specially set up or claimed by him under the Constitution or laws of the United States; whereas the Circuit Court of Appeals Act does not declare that the final judgment of a Circuit Court in a case in which there was a claim of the repugnancy of a state statute to the Constitution of the United States may be reviewed here only upon writ of error sued out by the party making the claim. In other words, if a claim is made in the Circuit Court, no matter by which party, that a state enactment is invalid under the Constitution of the United States, and that claim is sustained or rejected, then it is consistent with the words of the act, and, we think, in harmony with its object, that this court review the judgment at the instance of the unsuccessful party, whether plaintiff or defendant.

It was the purpose of Congress to give opportunity to an unsuccessful litigant to come to this court directly from the Circuit Court in every case in which a claim is made that a state law is in contravention of the Constitution of the United States.

If the Circuit Court had adjudged in this case that the township's claim of unconstitutionality was without merit and had given judgment for the plaintiff, can it be doubted for a moment that the township could have brought the case here directly from the Circuit Court upon writ of error? But if the township, upon a denial of its claim, could invoke our jurisdiction, as of right, upon what principle can the plaintiff be denied the like privilege if the state law upon which his action depended was, upon his adversary's claim, stricken down as void under the Constitution of the United States? Can the case, so far as the township is concerned, be regarded as belonging to the class which the act of Congress brings directly within the cognizance of this court, and yet not be regarded as a case of that class with respect to the plaintiff? The answer to these questions has already been indicated. * * * Our jurisdiction depends only on the inquiry whether that judgment was in a case in which it was claimed that a state law was repugnant to the Constitution of the United States."

The case last quoted is not modified by any of the subsequent decisions of this court already referred to, nor by the case of *Ayers v. Polsdorfer*, 187 U. S. 585.

These conclusions are also supported by the decisions of several of the Circuit Courts of Appeal.

See *City of Owensboro v. Owensboro Water Works*, 115 Fed. Rep. 318. (Decision by the Circuit Court of Appeals for the Sixth Circuit).

Pike's Peak Company v. City of Colorado Springs, 105 Fed. Rep. page 3. (Decision by the Circuit Court of Appeals for the Eighth Circuit).

Keyser v. Lowell, 117 Fed. Rep. page 400. (Decision by the Circuit Court of Appeals for the Eighth Circuit).

Wright v. McFarlane & Co., 122 Fed. Rep. page 770. (Decision by the Circuit Court of Appeals for the Ninth Circuit).

Appellant, in its bill, asserts and relies on rights which it claims are guaranteed to it under the Constitution of the United States; and also asserts and relies on rights which it claims are given to it under a law of the United States.

The appellees *"claim"* that the laws of appellant, sought to be enforced in this action, are in contravention of the Constitution of the United States.

From the decisions of this Court it seems perfectly clear that an appeal, either *must* be taken, or *may* be taken, directly to this court from the Circuit courts in any case that involves the construction or application of the Constitution of the United States, or a law or treaty of the United States, or in any case in which the Constitution or law of a State is "claimed" by either party to be in contravention of the Constitution of the United States, regardless of the ground on which the jurisdiction of the Circuit Court may rest.

Such being the case, there is but one question left for consideration on this motion. Is it necessary that such constitutional question should be involved in the *decision* of the court, or must the court, regardless of its conclusions on the evidence, have decided that the constitution or law is, or is not, in contravention of the Constitution of the United States, in order to sustain such appeal?

Counsel for appellees say in their brief that the constitutional question must have been decided by the court adversely to the appellant, although the construction placed by the Circuit Court on the statute or constitution, or its conclusions on the evidence, rendered such decision unnecessary. The Circuit Court of Appeals act makes no such limitation; under the language of the act, the right of appeal lies to this court in any *case* that involves the construction or application of the Constitution of the United States, or in *any case* in which the constitution or law of a state is claimed by either party to be in contravention of the Constitution of the United States.

As stated by the Court in the case of Loeb vs. Columbia Township Trustees, 179 U. S. 477, Supra:

"That section differs from section 709 of the Revised Statutes relating to the review by this Court of the final judgment of the highest court of a State in this, that under the latter section we can review the final judgment of the state court upon writ of error sued out by the party who is denied a right, privilege or immunity specially set up or claimed by him under the Constitution or laws of the United States; whereas the Circuit Court of Appeals Act does not declare that the final judgment of a Circuit Court in a case in which there was a claim of the repugnancy of a state statute to the Constitution of the United States may be reviewed here only upon writ of error sued out by the party making the claim. In other words, if a claim is made in the Circuit Court, no matter by which party, that a state enactment is invalid under the Constitution of the United States, and that claim is sustained or rejected, then it is consistent with the words of the act, and, we think, in harmony with its object, that

this court review the judgment at the instance of the unsuccessful party, whether plaintiff or defendant.

It was the purpose of Congress to give opportunity to an unsuccessful litigant to come to this court directly from the Circuit Court in every case in which a claim is made that a state law is in contravention of the Constitution of the United States. * * * Our jurisdiction depends only on the inquiry whether that judgment was in a case in which it was claimed that a state law was repugnant to the Constitution of the United States."

If, in the decision of the case, the Circuit Court either declines to decide the constitutional questions involved, or to determine the rights claimed thereunder, or makes such a finding on the facts as renders it unnecessary to determine the constitutional questions, it does not deprive the party whose right is so denied, or who claims such findings to be unsupported by the testimony, of his right to appeal to this Court. If it were otherwise, the trial court would have the power to absolutely deprive a party of the right of appeal in any such case, wherever the jurisdiction of the Circuit Court rested solely upon the ground that the suit arose under the constitution, laws, or treaties of the United States.

As stated by Chief Justice Marshall in *Cohen v. Virginia*, 6 Wheaton, quoting from page 378, "A case in law or equity consists of the right of the one party as well as of the other; and may truly be said to arise under the Constitution or a law of the United States, whenever its correct decision depends on the construction of either." That is, it is the

correct decision of the court, which in all cases is the final decision, that must control.

If the trial court had either correctly construed the laws of the State, sought to be enforced in this action, or made findings of fact in accordance with the evidence, then it would have been unnecessary for the court to have passed upon all of the rights claimed by appellant under the Constitution of the United States and the acts of Congress, as well as to have determined whether or not the laws sought to be enforced, are in contravention of the Constitution of the United States as claimed by appelees.

The State anti-trust act, one of the laws of the appellant sought to be enforced in this action, is almost identical in phraseology with the Federal anti-trust act sought to be enforced in the suit brought by the United States against these appellees; and upon even less testimony than the State rests its claim, the four Circuit Court Judges for the Eighth Circuit, found that the acts complained of were in violation of the Federal anti-trust law, and also amounted to an absolute consolidation of the lines of railway of the Great Northern and Northern Pacific Railway Companies; while the District Judge, sitting in the same circuit, in this action, holds that such acts are neither in violation of the Federal anti-trust act, or of the State anti-trust act, or the laws of appellant, prohibiting the consolidation of parallel and competing lines of railway; and declines to follow the decision rendered by the four Circuit Court Judges on the facts; and in effect, declines to follow the decisions of this Court in the

joint Traffic Association cases, by holding that they are not applicable.

In discussing the question of consolidation or control, as established by the facts in this case the four Circuit Court Judges for the Eighth Circuit in the Federal case said:

"It will not do to say that, so long as each railroad company has its own board of directors, they operate independently, and are not controlled by the owner of the majority of their stock. It is the common experience of mankind that the acts of corporations are dictated and that their policy is controlled by those who own the majority of their stock. Indeed, one of the favorite methods in these days, and about the only method, of obtaining control of a corporation, is to purchase the greater part of its stock. It was the method pursued by the Northern Pacific and Great Northern Companies to obtain control of the Chicago, Burlington & Quincy Railroad; and, so long as directors are chosen by stockholders, the latter will necessarily dominate the former, and in a real sense determine all important corporate acts.

The fact that the ownership of a majority of the capital stock of a corporation gives one the mastery and control of the corporation was distinctly recognized and declared in Pearsall v. Great Northern Railway, 161 U. S. 646, 671, 16 Sup. Ct. 705, 710, 40 L. Ed. 838. The same fact has been recognized and declared by other courts. Pennsylvania R. Co. v. Commonwealth (Pa.) 7 Atl. 368, 371; Farmers' Loan § Trust Co. v. New York & Northern Railway Co., 150 N. Y. 410, 425, 44 N. E. 1043, 34 L. R. A. 76; People ex rel vs. Chicago Gas Trust Co., 130 Ill. 268, 22 N E. 798, 802, 8 L. R. A. 497, 17 Am. St. Rep. 319. In opposition to this view counsel cite Pullman Car Co. v. Missouri Pacific Co., 115 U. S. 587, 596, 6 Sup. Ct. 194, 29 L. Ed. 499, but in that case the meaning of the word 'controlled' as used in a private contract, was the point under consideration, and what was said on the subject cannot be held

applicable to cases arising under the anti-trust act, when the point involved is whether the ownership of all of the stock of the two competing and parallel railroads vests the owner thereof with the power to suppress competition between such roads. We entertain no doubt that it does. Indeed, we regard the suppression of competition, and to that extent a restraint of commerce, as the natural and inevitable result of such ownership.

What has been done through the organization of the Securities Company accomplishes the object which Congress has denounced as illegal more effectually, perhaps, than such a combination as is last supposed. That is to say, by what has been done the power has been acquired (and provision made for maintaining it) to suppress competition between two interestate carriers who own and operate competing and parallel lines of railroad. Competition, we think, would not be more effectually restrained than it now is under and by force of the existing arrangement if the two railroad companies were consolidated under a single charter."

See *United States v. Northern Securities Company*, et al., 120 Federal Reporter, page 721.

That decision was rendered prior to the one by Judge Lochren involved in this appeal; but the latter judge holds that there is no consolidation or control, in violation of either the Federal or State anti-trust acts, or the State laws against consolidation of parallel and competing lines of railway. (See Fols. 411 and 500, pages 103a to 126a of the record).

We refer to the decision in the Federal case, only for the purpose of showing that our contention, that the District Judge who decided this case did not construe the laws of appellant correctly, or make findings in accordance with the testimony, is not without foundation.

Should this Court construe the laws in question, or find the facts in accordance with appellant's contention, and as decided in the Federal case, then all of the constitutional rights claimed by the appellant, as well as its rights under the Federal anti-trust act; and the claim made by the appellees as to the unconstitutionality of the laws sought to be enforced, will be before this court for determination.

Counsel for appellees assert that one of the constitutional rights claimed by the appellant can have nothing to do with this case. It is not proper, nor do we intend, on this motion, to enter into any discussion of the merits of this case. But in view of the assertion above referred to, we make this sugestion. One of the claims made by appellant in its bill of complaint is, that the Northern Securities Company was organized for the purpose of violating the laws of appellant, and is now being used as a device or scheme to evade and violate the laws of the State of Minnesota; and if allowed to continue, this appellant will be denied the right guaranteed to it under Article IV of the Constitution of the United States. That corporation in turn claims that by reason of the rights conferred on it by the laws of New Jersey, it has full corporate power and authority to purchase and own all of the capital stock of the Great Northern and Northern Pacific Railway Companies, and to exercise all the powers and rights of such ownership, notwithstanding the laws of appellant. Supposing that the state of New Jersey by special act of its legislative body had created a corporation, the avow-

ed purpose and object of which, as shown by its grant of power from the State of New Jersey, was to consolidate the Great Northern and Northern Pacific Railway Companies in violation of the laws of the State of Minnesota; would such a grant be of any force or effect as against the rights of the State of Minnesota under Article IV of the Constitution of the United States, which declares that full faith and credit shall be given in each state to the public acts of every other state? If the State of New Jersey is powerless to give any such right or authority under such an act as against the State of Minnesota, can any corporation organized under the general laws of the State of New Jersey thus acquire an authority or power which the State of New Jersey could not itself confer?

The Court in the case of *United States v. Northern Securities Company, et al., supra,* held that if the State of New Jersey had undertaken to invest the incorporators of the Northern Securities Company with the power to do acts which are prohibited by Congress, acting under constitutional authority, such a grant would have been void; and that the Federal anti-trust act rendered void, or at least prevented the exercise of any power acquired under the laws of New Jersey, which is in violation of its provisions.

This is one of the claims asserted by the appellant against the Northern Securities Company in this case, in addition to its claim that no corporation can acquire any right or power under the laws of New Jersey to violate the laws of the State of Minnesota

in so far as they relate to property within the state of Minnesota.

We make these suggestions as to some of the claims, only for the purpose of showing that constitutional questions are involved, and will arise, in case this Court finds the facts to be established as we claim the evidence shows them to be, notwithstanding the assertions of counsel for appellees.

The constitutionality of the laws sought to be enforced by appellant in this action have never been determined by this Court. The State anti-trust act, one of the laws in question, was not enacted until five years after the case of *Pearsall v. The Great Northern Railway Company* was decided by this Court; and the constitutionality of this or any similar state legislation has never been before this Court for determination.

One of the most important questions to be determined on this appeal is, to what extent, under the commerce clause of the constitution, can a state regulate and control corporations created by it, which are engaged in interstate commerce?

That this constitutional question is involved and is a very important one in this case is shown by the fact that counsel for both sides in the Federal as well as the State case against these appellees, devoted days to its discussion before the Court.

The appellees having removed the case from the State to the Federal Court, on the ground that the cause of action arose under the Constitution and laws of the United States, and then asserted in their answers that the laws in question are in contravention of the constitution, are now estopped from claiming that no such constitutional questions, or laws, or claims thereunder are involved. As stated by this Court in *Cowley v. Northern Pacific Railway Company,* 159 U. S., quoting from page 583:

"The case having been removed to the Circuit Court upon the petition of defendant, it does not lie in its mouth to claim that such Court had no jurisdiction of the case, unless the Court from which it was removed had no jurisdiction."

See also, *Ayers v. Watson,* 113 U. S. 595.

Mastin v. C. R. I. & P. Ry. Co., 123 Fed. Rep. 827.

Woodcock v. B. & O. Ry., 107 Fed. Rep. 767.

Aside from statutory requirements, there are two reasons why this Court should hold jurisdiction on appeal in this case, unless the acts of Congress clearly prevent it from so doing.

First: The judge who tried this case placed great stress on the language used by this Court in the case of *Pearsall v. the Great Northern Railway Company,* 161 U. S. page 646, wherein this Court, *by way of illustration only,* used the following language:

"Doubtless these stockholders (that is, Great Northern stockholders) could lawfully acquire by

individual purchases a majority or even the whole of the stock of the re-organized company, and thus possibly obtain its ultimate control; but the companies would still remain separate corporations with no interest as such in common." (See Fols. 481, 487, pages 221a and 222a of the record, where the lower court quotes the above language.)

It thus becomes necessary for this court to decide and determine just how far the language used in the Pearsall case is applicable to this case; and whether or not that language authorizes or protects such a plan and device to evade the laws of appellant as the evidence clearly shows was intended by the organizers and incorporators of the Northern Securities Company.

Second: This case must ultimately come to this court for final determination. There are great public questions involved in the case, and it is highly important that the State of Minnesota should know as speedily as possible what its rights are under the laws sought to be enforced in this action, that it may be able to protect itself and the rights of its citizens by such subsequent legislation or action as may be necessary for it to adopt.

The decision in this case on this appeal will determine the rights of all the other states through which the lines of appellees pass, and one of which has begun action in this court and in which the evidence has not yet been taken but which it awaiting the decision of this case.

The action of the United States against these appellees will necessarily determine the rights of the

National Government as against these appellees; and the State of Minnesota should have its rights determined at or about the same time, so that no conflict may exist between the two sovereignties in relation to these appellees.

We respectfully submit that this motion should be denied.

W. B. DOUGLAS,
Attorney General.
M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

FILE COPY.

Supreme Court of the United States.

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

OCTOBER TERM, 1903.

No. 453.

STATE OF MINNESOTA,
Appellant,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, et al.,
Appellees.

BRIEF ON BEHALF OF APPELLANT.

W. B. DOUGLAS,
Attorney General.

M. D. MUNN,
GEORGE B. WILSON,
Of Counsel.

30273

Supreme Court of the United States.

OCTOBER TERM, 1903.

STATE OF MINNESOTA,

Appellant,

vs.

NORTHERN SECURITIES COMPANY, GREAT NORTHERN RAILWAY COMPANY, NORTHERN PACIFIC RAILWAY COMPANY, et al.,

Appellees.

BRIEF ON BEHALF OF APPELLANT.

I.

This is an action brought by the State of Minnesota in its capacity as a governmental or sovereign body on behalf of all the people of the State, and also in its individual or corporate capacity, for the purpose of enjoining the consolidation of the Great Northern and Northern Pacific Railway Companies, which corporations respectively own parallel and competing lines of railway within the State of Minnesota.

It was tried in the Circuit Court of the United States for the Eighth Circuit, before Judge Lochren, one of the District Judges in that Circuit, upon a bill of complaint, separate answers by appellees and about twelve hundred pages of printed testimony and exhibits. A decision was rendered against appellant, on which a decree was entered September 9th, 1903. From this decision and judgment an appeal was allowed and taken direct to this Court.

The decision of the Court is found at Fols. 415 to 500. pages 104a to 126a of the record.

(It should be borne in mind, in referring to this record, that while the pleadings, orders, decision and all appeal papers were printed in a separate volume, the Clerk has had them bound in one volume with the evidence, and they appear on pages 1 to 136a of the record. The testimony appears immediately following on pages 1 to 1197 of the record).

The decree and decision is claimed to be erroneous in holding that the Northern Securities Company was not organized for the purpose of consolidating the two appellee railway companies, and that the ownership of the stock of the two railway companies by the Northern Securities Company does not amount to a consolidation within the meaning of the acts set forth in Appellant's bill; and also that the Northern Securities Company does not, in fact, control the two railway companies by virtue of its ownership of the stock of such railway companies; and also in not holding that the Northern Securities Company was intended by its incorporators to be

and is, in fact, a device for evading and violating the laws of appellant set forth in its bill; and also in holding that the action of the stockholders of the Great Northern and Northern Pacific Railway Companies in the formation of the Northern Securities Company, and exchanging their stock holdings in said railway companies for the stock of said Northern Securities Company, did not amount to a consolidation of said two railway companies within the meaning of said acts; and also in holding that the Northern Securities Company is not a purchaser and manager of the two railway companies within the meaning of said acts; and also that said decision is erroneous in holding that the formation of the Northern Securities Company, in the manner shown by the testimony, did not amount to a violation of Chapter 359 of the General Laws of Appellant for the year 1899; also that the decision is erroneous in not holding that the exercise of the powers of said Northern Securities Company, under its charter, over the stock of the Great Northern and Northern Pacific Railway Companies in violation of the laws of appellant, is [redacted] an invasion of a right guaranteed to appellant under Section 1, Article IV of the Constitution of the United States; and also in holding that appellant could not avail itself of the act of Congress, passed July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies."

These various claims are covered by the following assignments of error, each of which is urged by appellant. These assignments appear at folios 507 to

525, pages 128a to 132a of the record:

(1) The Court erred in ordering and decreeing that complainant's bill of complaint herein be dismissed.

(2) The Court erred in finding and holding that the agreement, scheme or plan, set forth in complainant's bill of complaint, and shown by the testimony, and which contemplated and resulted in the organization of the Northern Securities Company, with power to purchase, or acquire by exchange, a majority of the stock of both the Great Northern and Northern Pacific Railways, is lawful.

(3) The Court erred in finding and holding that the Northern Securities Company was organized for a lawful purpose.

(4) The Court erred in finding and holding that the Northern Securities Company is merely an investing stockholder in the stocks of the Great Northern and Northern Pacific Railway Companies.

(5) The Court erred in finding and holding that the Northern Securities Company is without power to interfere with the management or to control the Great Northern and Northern Pacific Railway Companies, or either of them.

(6) The Court erred in finding and holding that the Board of Directors of the Great Northern and Northern Pacific Railway Companies will control the business and affairs of its own corporation uninfluenced by the Northern Securities Company, or its officers.

(7) The Court erred in finding and holding that the power of the Northern Securities Company by virtue of its large holdings of stock in each of said railway companies is limited to the election of the Board of Directors of each of said companies.

(8) The Court erred in failing to find and decide that the Northern Securities Company was organized for the express purpose of getting control, by purchase or exchange, of a majority of the stock of each of said railway companies, and by virtue of such stockholdings to manage and control the business and affairs of each of said railway companies, their respective officers and employes.

(9) The Court erred in failing to find and decide that the Northern Securities Company was organized, in manner and form alleged in complainant's bill, for the purpose and with the intent of evading and avoiding the laws of the complainant state, prohibiting any railroad corporation or the lessees, purchasers or managers of any railroad corporation from consolidating the stock, property or franchise of such corporation with, or to lease or purchase the works or franchise of or in any way control any other railroad corporation owning or having under its control a parallel or competing line.

(10) The Court erred in finding and holding that the formation of the Northern Securities Company in the manner shown by the testimony, and the acquisition by it of a majority of the stock of

the Great Northern and Northern Pacific Railway Companies in the manner and for the purposes shown in said testimony, is not a violation of Chapter 29 of the General Laws of the State of Minnesota for the year 1874; and also Chapter 94 of the General Laws of the State of Minnesota for the year 1881, set forth in complainant's bill of complaint.

(11) The Court erred in finding and holding that the formation of the Northern Securities Company in the manner shown by the testimony and the acquisition by it of a majority of the stock of the Great Northern and Northern Pacific Railway Companies in the manner and for the purposes shown in said testimony is not a violation of Chapter 359 of the General Laws of the State of Minnesota for the year 1899, set forth in complainant's bill of complaint.

(12) The Court erred in finding and holding that the acts of said defendants, and each of them, set forth in said bill of complaint, and as shown by the testimony, does not constitute a violation of each of said laws referred to in assignments numbered ten and eleven.

(13) The Court erred in finding and holding that the Northern Securities Company is not a railroad corporation within the meaning and intent and purpose of Chapter 29 of the General Laws of Minnesota for the year 1874.

(14) The Court erred in finding and holding

that the Northern Securities Company is not a purchaser of the Great Northern and Northern Pacific Railways within the meaning and intent of Chapter 29 aforesaid.

(15) The Court erred in finding and holding that the Northern Securities Company is not a manager of any railroad company within the meaning of said Chapter 29.

(16) The Court erred in finding and holding that the evidence fails to show that the Northern Securities Company was formed for the purpose of acquiring and controlling a majority of the stock of the Great Northern as well as that of the Northern Pacific Railway Company.

(17) The Court erred in finding and holding that the acts of the individual stockholders in promoting the unlawful combination charged in the bill of complaint, and as shown by the testimony, were not the acts of said Railway Corporations, and cannot be attributed to said railway corporations.

(18) The Court erred in finding and holding that after the Northern Securities Company had purchased and become the owner of a large majority of the stock of the Northern Pacific Railway Company it was not disabled thereby from afterwards acquiring a majority of the stock of the Great Northern Railway Company; and in holding and finding that in neither case was it a purchaser of a railroad company within the meaning of the laws of this state set forth in complainant's bill.

(19) The Court erred in finding and holding that the Northern Securities Company, by virtue of its ownership of a majority of the stock of each of said railway companies, had no power to manage or to direct the management or the operation of either railroad in respect to rates or charges for transportation or otherwise.

(20) The Court erred in finding and holding that none of the defendants have violated the provisions of Chapter 359 of the Laws of the State of Minnesota for the year 1899.

(21) The Court erred in finding and holding that the agreement or arrangement under which the Northern Securities Company was organized, and the organization thereof, to purchase and the purchase by it of a majority and controlling interest of the stock of each of said railway companies, are not acts or contracts in restraint of trade or commerce within the State of Minnesota or without the State of Minnesota, and do not constitute a violation of the state laws set forth in complainant's bill or the National Anti-trust Law, referred to in said bill.

(22) The Court erred in finding and holding that the ownership of a majority of the stock of both of said railway companies by said Northern Securities Company would not suppress or does not tend to suppress competition between said railway companies in either state or interstate commerce.

(23) The Court erred in finding and holding that the formation of the Northern Securities Com-

pany, and its holding of stock in said two railway companies, has not, and cannot have, anything to do directly or indirectly with trade, commerce, transportation or rates within the State of Minnesota, or along the lines of said railway companies.

(24) The Court erred in finding and holding that it was not sufficient to entitle complainant to relief that the Northern Securites Company may, by reason of the combination, scheme or plan set forth in the bill of complaint, or by the purchase of a majority of the stock of each of said railway companies, have acquired the power to suppress competition between the two said defendant railway companies.

(25) The Court erred in finding and holding that the complainant could not avail itself of the provisions of the Act of Congress, passed July 2d, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," being Chapter 647 of the Act of Congress for the year 1890.

(26) The Court erred in finding and holding that the plan and purpose of organizing the Northern Securities Company for the purpose and in the manner set forth in complainant's complaint, and as shown by the testimony; and the subsequent consummation of such plan and purpose by the issuance and exchange of the stock of the Northern Securities Company for a majority of the stock of the Great Northern and Northern Pacific Railway Com-

panies, did not invade and violate the rights guaranteed to the State of Minnesota under Article 4 of the Constitution of the United States.

(27) The Court erred in finding and holding that the formation of the Northern Securities Company under the laws of the State of New Jersey for the purpose set forth in complainant's complaint, and as shown by the testimony; and the attempt of the incorporators of said Northern Securities Company to avail themselves of the sovereign power of New Jersey, delegated by said laws, for the purpose set forth in complainant's complaint, and as shown by the testimony, did not constitute a violation of the right guaranteed to the State of Minnesota under said Article 4 of the Constitution of the United States, which provides that full faith and credit shall be given in each state to the public acts and records of every other state.

(28) The Court erred in ordering and decreeing that appellant was not entitled to the relief prayed for, or to any relief in said action.

(29) The Court's Findings of Fact and Conclusions of Law, hereinbefore specified, are not justified by the evidence and are severally contrary to law.

II.

ADMITTED OR PROVEN FACTS IN THE CASE

In 1874 the legislature of the State of Minnesota passed chapter twenty-nine (29), which provides as follows:

"Section 1. No railroad corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchise of such corporation with, or lease or purchase the works or franchise of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line."

In the year 1881, the Legislature of the State passed an act which provided, among other things, the following:

"No railroad corporation shall consolidate with, lease or purchase, or in any way become the owner of or control any other railroad corporation or stock, franchises, rights or property thereof, which owns or controls a parallel or competing line."

In the year 1899 the Legislature of the State passed Chapter 359 of the General Laws for that year which provides among other things as follows:

"Section 1. Any contract, agreement, arrangement, or conspiracy, or any combination in the form of a trust, or otherwise, hereafter entered into which is in restraint of trade or commerce within this State, or in restraint of trade or commerce between any of the people of this State and any of the people of any other State or Country, or which limits or tends to limit or control the supply of any article,

commodity or utility, or the articles which enter into the manufacture of any article [of] utility, or which regulates, limits or controls or raises or tends to regulate, limit, control or raise the market price of any article, commodity or utility, or tends to limit or regulate the production of any such article, commodity or utility, or in any manner destroys, limits or interferes with open and free competition in either the production, purchase or sale of any commodity, article or utility is hereby prohibited and declared to be unlawful.

That when any corporation heretofore or hereafter created, organized or existing under the laws of this State, whether general or special, hereafter unites in any manner with any other corporation wheresoever created, or with any individual, whereby such corporation surrenders or transfers, by sale or otherwise, in whole or in part, its franchise, rights or privileges or the control or management of its business to any other corporation or individual, or whereby the business management or control of the business of such corporation is limited, changed or in any manner affected, and the purpose or effect of such union or combination is to limit, control or destroy competition in the manufacture or sale of any article or commodity, or is to limit or control the production of any article or commodity, or is to control or fix the price or market value of any article or commodity or the price or market value of the material entering into the production of any article or commodity, or in case the purpose or effect of such union or combination is to control or monopolize in any manner the trade or commerce, or any part thereof, of this State, or of the several States, such union, combination, agreement, arrangement or contract is hereby prohibited and declared to be unlawful.

* * * * * * * *

Sec. 3. Any corporation heretofore or hereafter created, organized or existing under the laws of this State which shall hereafter either directly or indirectly make any contract, agreement or manage-

ment, or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, forfeit its charter, rights and franchises, and it shall thereafter be unlawful for such corporation to engage in business, either as a corporation or as a part of any combination, trust or monopoly, except as to the final disposition of its property under the laws of this state.

* * * * * * * * *

Sec. 6. That for the purpose of carrying out the provisions of this act, any citizen of this State may, and it is hereby declared to be the duty of the Attorney General to institute, in the name of the State, proceedings in any court of competent jurisdiction against any person, partnership, association or corporation who may be guilty of violating any of the provisions of section one (1) of this act, for the purpose of imposing the penalties imposed by this act, or securing the enforcement of section three (3) hereof.

Sec. 8. This act shall take effect and be in force from and after its passage.

Approved April 21st, 1899."

The Great Northern Railway Company is a corporation created under the laws of the State of Minnesota, and owning various lines of railway extending through the northern portion of the State of Minnesota.

The Northern Pacific Railway Company is a corporation organized under the laws of the State of Wisconsin, but which thereafter filed its Articles of Incorporation with the Secretary of State for the State of Minnesota, and thereby became, under the laws of the State of Minnesota, a corporation of this State.

The Northern Pacific Railway Company is the owner of a number of lines of railway extending through and over the northern portion of the State of Minnesota; and the lines of railway of both the Great Northern and Northern Pacific are parallel and competing with each other, within the State of Minnesota, having upwards of thirty junction points within the State and running generally parallel to each other, and only a very few miles apart, through a large portion of their extent in the State of Minnesota. Both the Great Northern and Northern Pacific Railway Companies are the recipients of valuable land grants from the State of Minnesota made to each, or to subsidiary companies, which constructed a portion of the lines of railway now owned and operated by said Railway Companies.

The State of Minnesota is the owner of and maintains a large number of charitable and educational institutions within the State, many of which are situated along the lines of the Great Northern and Northern Pacific Railway Companies, and are largely dependent upon those companies for the transportation of supplies and occupants, which the State of Minnesota purchases and maintains in such institutions.

The State of Minnesota also owns a large amount of lands in the territory tributary to the lines of the Great Northern and Northern Pacific Railway Companies, the value of which lands is largely affected by the rates on freight and passengers, to and from the locality where such lands are situated.

These conditions existed on and prior to January 1st, 1902.

During the early part of the year 1901 J. P. Morgan and J. J. Hill who respectively dominated and practically controlled the Northern Pacific and Great Northern Railway companies, decided to purchase for said railway companies the property and franchises of the Chicago, Burlington & Quincy Railroad Company, a corporation owning upwards of eight thousand miles of railroad, a small portion of which was within the State of Minnesota; and for that purpose acquired substantially all of the stock of said last named Company, and had issued in payment therefor, for each dollar of stock so acquired, two dollars in four per cent joint collateral bonds of said C. B. & Q. railroad company guaranteed by said Northern Pacific and Great Northern Railway Cos.

No official action was taken by the stockholders or directors of either the Great Northern or the Northern Pacific Cos. relating to this purchase until some time in the spring of 1901 and long after Messrs. Hill and Morgan had agreed upon the same with a committee representing the C. B. & Q. Co. 2121-6
See folios 221 and 2 of record. also 2116 – 2122 also 3035

On and since January 1st, 1901, the Great Northern Railway Company has had an authorized capitalization of $125,000,000.00 par value, of which amount $123,880,400.00 par value has been issued. On the same date the Northern Pacific Railway Company had an authorized and issued capitalization of $155,000,000.00 par value, $75,000,000 of

which was preferred stock and $80,000,000.00 of which was common stock; the preferred stock being subject to retirement on the first day of January each year from January 1st, 1901, until January 1st, 1917. The preferred and common stock had equal voting powers in the election of all officers of the Northern Pacific Railway Company selected by its stockholders.

During April, 1901, demand was made on Hill and Morgan, by certain of the large stockholders of the Union Pacific Railway Co. who owned some stock of the Northern Pacific, for representation on the board of directors of the latter company and an interest in said purchase. (See Folios 304-9). This demand was refused by Hill and Morgan; during the latter part of April and the early part of May, 1901, interests adverse to the Great Northern Railway Company and the plans of Mr. Morgan and Mr. Hill, began buying the preferred and common stock of the Northern Pacific Railway Company; and on or prior to May 9th of that year, had acquired $37,023,000 par value of the common and $41,085,000 par value of the preferred stock, thus obtaining a clear majority of the total capital stock of the Northern Pacific Railway Company. This stock was taken in the name of Mr. Harriman and Mr. Pearce as trustees for the so-called Union Pacific Railway Company's interests. (See Folio 322 et seq, of Record).

As soon as Mr. Hill and Mr. Morgan learned this fact, Mr. Morgan bought, in the open market $15,000,000 par value of the common stock of the

Northern Pacific Railway Company. (See Fol. 1937 of the record). This made a total holding by Mr. Morgan and his associates of between $41,000,000 and $42,000,000 par value of the common stock of the Northern Pacific Railway Company, a clear majority of that class of stock. (See Fol. 1855, of the record). Thus, after May 9th, 1901, J. P. Morgan and his associates were the holders of a majority of the common stock of the Northern Pacific Railway Company; while Mr. Harriman and Mr. Pearce, acting for the Union Pacific interests, were the holders of a majority of the preferred and common combined, and could elect the board of directors at the annual election to be held in the following October.

For many years prior to November 13th, 1901, the Great Northern Railway Company had been managed and controlled by Mr. Hill, who, with certain stockholders referred to in the testimony as Mr. Hill's associates, and among whom were Mr. Kennedy, Mr. Baker, Mr. Thorne, Mr. James, Lord Strathcona and Lord Mount Stevens, owned about $35,000,000.00 of the issued capital stock of that company. These gentlemen above named, aside from Mr. Hill, seldom, if ever, attended any meetings of the stockholders of the company, but always sent their proxies to Mr. Hill. These gentlemen, as well as most all the other stockholders of the Great Northern Railway Company, left the management of that company and the determination of its policy to Mr. Hill. Mr. Hill had, without contro-

versy or opposition, been able to control the Great Norhern Railway Company for many years prior to the organization of the Northern Securities Company. In fact the Great Northern Railway Company was known as Mr. Hill's road. On this subject Mr. Hill testified as follows:

> "Witness: I may say that I think I controlled the policy of the Great Northern Railway Company and its predecessor as fully as the policy of any railway ever was controlled in this country, and I never owned over ten or twelve per cent—I never owned a majority of the stock, but I always had a following of good, loyal stockholders, and the men who were most active, covering about 33 or 35 millions out of 125 millions, practically formed the company, and they desired that their other shareholders, whoever they were, new or old, might participate in anything that they were doing, if they thought it would be any advantage to them as shareholders.
>
> Q. And so, in order to continue the policy which had obtained for so many years for the benefit of the company and of the public, they arranged to put their holdings into this holding corporation—these shareholders?
>
> A. The eleven shareholders?
>
> Q. Yes.
>
> A. And asked that the same offer be made to all the shareholders so that they might not be charged with any discrimination, or doing anything for themselves that they were not willing to do for all the shareholders.
>
> Q. Exactly. Now, would the policy be perpetuated or the interest protected if less than a majority of the stock of the Great Northern had gone into the holding corporation?
>
> A. Oh, yes, sir." (See Fols. 3811-3812-3813 of the record).

Mr. Baker testifies (Fol. 1656, of the record) as follows:

> Q. The Great Northern Railway Company had always been substantially under the control of Mr. Hill, so far as the determination of its policy was concerned, during all the time you were a stockholder of that company, had it not?
>
> A. I think so.
>
> Q. In other words, it was known among you gentlemen as Mr. Hill's road?
>
> A. Yes, sir.
>
> Q. And you gentlemen, including yourself and the other parties making up this coterie, as well as many others, had always left it entirely to Mr. Hill so far as the voting of your stock was concerned, sending your proxies?
>
> A. Yes, sir."

On the same subject, Mr. Kennedy testified (Fol. 1591, of the record) as follows:

> "Q. For some years prior to this time, yourself and Mr. Hill, and some other friends of both yourself and Mr. Hill, had had holdings amounting to about thirty-five millions, in the Great Northern Railway Company, had you not?
>
> A. That depends upon the time you refer to.
>
> Q. Well, for six months preceding July 1, 1901.
>
> A. My recollection is that Mr. Hill and friends of his (some of whom I don't know) held right along for some years from 25 to 30 per cent of the stock of the Great Northern Railway Company, and the amount which you refer to; I think it was thirty-five millions.
>
> Q. Yes.
>
> A. Yes. That would be less than a third in volume of the stock then outstanding.
>
> Q. And the holders of this amount of stock had always co-operated, so far as the determina-

tion of the policy of the Great Northern Railway Company was concerned, and the development of its railway system, had they not?

A. Well, I can't say that. We were stockholders, and so far as I was concerned I had confidence in Mr. Hill and his management. I always gave him my proxy as a stockholder, naturally would; and I believe not only these particular persons you refer to, but I think that at least nine-tenths of the stockholders always did send their proxies to Mr. Hill for an annual election. But when you talk about controlling the policy, I had nothing to do with the policy of the company."

The gentlemen and coterie of stockholders referred to in the above testimony were known as Mr. Hill's associate stockholders of the Great Northern Railway Company, as above stated.

From the re-organization of the Northern Pacific Railway Company, which took place in 1896, down to May 9th, 1901, the Northern Pacific Railway Company had been substantially under the control of J. P. Morgan of the firm of J. P. Morgan & Co., and certain associate stockholders with him in that company. J. P. Morgan had been a member and chairman of the board of three voting trustees, who had voted all of the stock of the Northern Pacific Railway Company during the continuance of the voting trust, which was in force from the re-organization of the Northern Pacific Railway Company till January 1st, 1901.

Relative to the control of the Northern Pacific Railway Company prior to the organization of the

Northern Securities Company, Mr. Morgan testified as follows:

> "We had re-organized the Northern Pacific. We had placed all the securities of the Northern Pacific, and I knew, as I had always supposed, that there were people—friends of ours and other people—who held practically enough Northern Pacific—we always supposed we had with us people upon whom we could depend to protect our moral control of the property—and consequently when that news came to me I hadn't any doubt about the fact of the matter, and at the same time this news came so strong, whoever had acquired it. I felt something must have happened. Somebody must have sold. I knew where certain stocks were, and I figured it up. I feel bound in all honor when I reorganize a property and am morally responsible for its management to protect it, and I generally do protect it; so I made up my mind that it would be desirable to buy 150,000 shares of stock, which we proceeded to do, and with that I knew we had a majority of common stock, and I knew that actually gave us the control and they couldn't take the minority and have it sacrificed to the Union Pacific interests" (See Fol. 2150 of the record).

Again at Folio 2194, Mr. Morgan said:

> "Mr. Kennedy and I were in Aix. He came down to see what in the mischief all this meant. I said I didn't know. He said, 'I am going to cable over to tell them to put my stock into your office. * * * Whatever you want done I want done with my Northern Pacific.' That is the way people treated me in the Northern Pacific. Whatever I was willing to do they wanted, and they wanted to put the stock just where I said to keep it safe. That is what they wanted. * * * It was a question of who held stock in the Northern Pacific,

and the men in the Northern Pacific wanted my policy, or our policy, from the reorganization carried out."

In order for Morgan and his associates to regain control of the Northern Pacific Railway Co., it was necesary to retire the preferred stock; nor could the plans of Hill and Morgan relative to placing the control of the two railway companies in a single holding company be carried out unless said preferred stock was retired. Thereupon Mr. Morgan and his associates agreed with Mr. Hill and his associates to retire the preferred stock. On this subject Mr. Hill testified as follows:

"Q. But what I mean is, after, say May 9, was there any definite plan between you and your associates and J. Pierpont Morgan & Co. with reference to the retirement of the preferred stock?

A. Previous to May 9. I think that between May 1 and the time they made up their minds to buy the control of the common that it was decided to exercise that privilege.

Q. And that was decided upon between you and your associates and J. Pierpont Morgan & Co.?

A. No; they simply said that that could be done, and they would do it. They wouldn't hand over control of the property. Mr. Morgan had a good deal of feeling that the Northern Pacific had been a difficult property to keep on its feet and get it on its feet. His name was connected with it, and he had a good deal of pride in not handing it over to a rival.

Q. When you speak of a rival, do you mean the Union Pacific interests?

A. The interests of the Union Pacific.

Q. And the matter then was definitely de-

termined upon that you had a right to retire the preferred stock?

A. That the Northern Pacific had.

Q. Of course you mean the company had a right to retire the preferred stock?

A. Yes, sir.

Q. And having a complete majority of the common stock that would give you and your associates and Mr. Morgan and his associates complete control of the Northern Pacific?

A. Of the Northern Pacific through a majority of the common stock.

Q. Yes; that is what I mean.

A. And the Great Northern had a very direct interest in knowing that it was not—that the control of the Northern Pacific was not—going to be vested in the friends of the Union Pacific, because if that was the case the Northern Pacific owning one-half the control of the Burlington, with the control of the Northern Pacific in the hands of the Union Pacific, the Great Northern would have had to go into the hands of the Union Pacific.

Q. Now, Mr. Hill, when subsequent to this determination to retire the preferred stock was it definitely decided upon to retire?

A. Oh, before myself and friends would agree to hold our Northern Pacific we had the promise of Messrs. Morgan & Co. that the preferred stock would be retired.

Q. And that was shortly before May 9?

A. Yes, sir.

Q. And propably before May 1, was it not, Mr. Hill?

A. No, sir.

Q. Between May 1 and May 9?

A. Between May 1 and May 9. It was between the time that Kuhn, Loeb & Co. interests attempted purchasing the Northern Pacific stock in a large way, or claiming control of it, and the time that Morgan & Co. bought." (See folios 384 to 389 of the record).

This preferred stock was to be retired on Jan. 1st, 1902; that being the earliest date on which it could be retired. The plan of retirement is fully set forth in the resolution of the Northern Pacific Railway Co. relating thereto and which appears at folio 3504 et seq of the record.

An examination of this resolution shows that the plan contemplated converting the preferred into common stock, leaving the total capitalization of the Northern Pacific Railway Company at $155,000,000 of common stock; and that only holders of common stock at the date of the adoption of the resolution were entitled to subscribe for and obtain the common stock which was to take the place of the preferred. This plan when carried out would leave the control of the Northern Pacific Railway Company with J. P. Morgan and his associates, holders of the common stock on and after May 9th, 1901. This plan was finally carried out and the preferred stock retired in accordance with the provisions of the resolution above referred to. The plan of retirement was agreed upon during the summer or early fall of 1901 and prior to the time of the organization of the Northern Securities Company. The annual meeting of the Northern Pacific Railway Company, under the by-laws of the company, was to be held in October, 1901. At this meeting the preferred stock was entitled to vote for the election of a Board of Directors and in order to prevent the election of a Board by the Union Pacific interests which might be hostile to the plan of retiring the preferred stock in the manner above re-

ferred to, it was decided if necessary, to amend the by-laws by the then existing Board of Directors composed largely of Morgan's associates and friends so as to postpone the holding of that meeting, until the preferred stock was retired.

On this subject Mr. Hill testified (Fol. 536, et seq., of the record) as follows:

"Q. Now, you were aware that the stock could not be retired; that is, there could be no compulsory retirement until the 1st of January, 1902?

A. That is correct; that is the date fixed.

Q. And I suppose you were aware that at the annual meeting which was to take place in October, of the stockholders, that at that annual meeting Mr. Harriman and his associates would have a majority of the common and preferred stock; that is, if they presented it and voted it?

A. If they presented it and voted it, and the meeting was held in October. The meeting date was a matter of the by-laws, which might be changed and amended at any time.

Q. That is just what I am getting at. At that time, Mr. Hill, you had in mind, if necessary, to postpone the annual meeting of the stockholders beyond January 1, did you not?

A. It might have been done.

Q. I want to know, Mr. Hill, if, as a matter of fact, you had that in mind at the time that it could be done?

A. It had occurred, and was discussed.

* * *

Q. What I want to get at is, did you have in mind some time the last of May or first of June, whatever time it was you got home or consulted with your counsel—did you have in mind the possibility of the Harriman interests dominating the election or controlling the election of the board of directors at the next annual meeting, did you not?

A. Certainly.

Q. And you did have in mind, and you were advised by your counsel, that if that should be done the directors so named would have the power to annul or cancel any action looking to the retirement of the Northern Pacific preferred which might be taken by the then board of directors?

A. They might have attempted to annul it.

Q. I don't care so much about the law of the case as I do what was in your mind and what was called to your attention. I ask you now if the possibility of such action was not present in your mind at that time?

A. It was called to my attention and was present during the summer, I suppose. It was a subject I thought very frequently of."

Mr. Hill's knowledge of the plan for retiring the preferred stock, and then under discussion by Mr. Hill with J. P. Morgan and other stockholders of both the Great Northern and Northern Pacific Railway Company is found at folios 384 to 535 inclusive, of the record. This testimony shows that the understanding and agreement between Mr. Hill and Mr. Morgan was that the preferred stock of the Northern Pacific Railway Company should be retired January 1st, 1902, so that the control of that company would be with Mr. Morgan and his associates; and that a controlling amount of the stock of the Northern Pacific Railway Company would be turned over to the Northern Securities Company when organized, so as to transfer the control of the Northern Pacific Railway Company to the Northern Securities Company; and that Mr. Hill and his associate stockholders of the Great Northern Railway Company would also turn their Great Northern stock holdings over to the North-

ern Securities Company, when organized, for the same purpose.

On November 13th, 1901, the defendant, the Northern Securities Company, was organized by certain of the stockholders of the Great Northern and Northern Pacific Railway Companies respectively under the laws, and in the State of New Jersay, with a capitalization of $400,000,000.00 par value, and very shortly thereafter acquired about $153,000,000.00 out of $155,000,000.00 of the capital stock of the Northern Pacific Railway Company and about $100,000,000.00 out of $123,889,400.00 of the capital stock of the Great Northern Railway Company.

A large portion and much more than a majority of the Northern Pacific stock was acquired on or before November 20th, 1901, at which time very little of the Great Northern stock had been acquired by the Northern Securities Company. Substantially all of the Great Northern, as well as the Northern Pacific stock so acquired was obtained by the Northern Securities Company in exchange for the stock of the last named Company on the basis of $115.00 of the Northern Securities Company's stock for each $100.00 par value of the Northern Pacific stock acquired and $180 of Northern Securities stock for each $100.00 par value of Great Northern stock acquired.

Thus the absolute control of both the Great Northern and Northern Pacific Railway Companies was vested in the Northern Securities Company, prior to Jan. 1st, 1902.

Mr. Hill, president of the Great Northern Railway Company, was elected president of the Northern Securities Company and made chairman of its executive committee, the majority of whom were Hill's former associate stockholders in the Great Northern Railway Company, who had been active in the formation of and had turned their stockholdings over to the Northern Securities Company.

The basis on which the stock of the two railway companies was to be exchanged for Northern Securities stock was fixed by Mr. Hill in July, 1901, five months prior to the organization of the Northern Securities Company (See Fol. 472 of the record).

The Northern Securities Company was actually organized on November 13th, 1901, by three clerks selected by Mr. Hill and Mr. Morgan, and on that day held the first meeting of the Board of Directors of the Northern Securities Company, consisting of these three persons, and adopted the following resolution:

> "Resolved, that the president be and he hereby is authorized, for and in behalf of this company, to purchase any shares of the common capital stock of the Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, that shall be tendered to this company at a price not exceeding $115 for each share of such capital stock of the par value of $100, such price to be payable in the fully paid up shares of the capital stock of this company, at par, the board of directors having adjudged and determined, and hereby adjudging and determining, that the value of such shares of the capital stock of the

Northern Pacific Railway Company is at least $115 per share." (See Fol. 1140 of the record).

On the following day, November 14th, the same Board of Directors again met and adopted the following resolution:

"Resolved, that the president be, and hereby he is, authorized, for and in behalf of this company, to purchase any shares of the preferred capital stock of the Great Northern Railway Company, a corporation organized and existing under the laws of the State of Minnesota, that shall be tendered to this company at a price not exceeding $180 for each share of such capital stock of the par value of $100, such price to be payable in the fully paid up shares of the capital stock of this company at par, the board of directors having adjudged and determined, and hereby adjudging and determining, that the value of such shares of the capital stock of the Great Northern Railway Company is at least $180 per share.

"Resolved, that the proper officers of the company be, and hereby they are, authorized and directed from time to time to make, execute and deliver proper certificates for the fully paid up shares of the capital stock of this company, in payment for any stock of the Great Northern Railway Company acquired pursuant to the foregoing resolution, at the price therein stated." (See Fols. 1285-1286 of the record).

Following the passage of this resolution, and at the same meeting, the Board of Directors was increased to fifteen, these three young men resigning, and some of the active promoters of the Northern Securities Company being elected in their place. Up to this time, there had been no president or exe-

cutive committee of the Northern Securities Company.

On November 15th, after the Board of Directors had been increased to fifteen, the following resolution was adopted, relating to the acquisition of the Northern Pacific stock owned by the Union Pacific interests:

> "Resolved, that the president be and hereby he is, authorized in behalf of this company to purchase said stock, namely, ... par value of the common stock, and ..... par value of the preferred stock of the Northern Pacific Railway Company, at an aggregate price of ....., payable as to ..... thereof in fully paid-up and non-assessable shares of the capital stock of this company at par, and as to ..... in cash, and that the officers of this company be and hereby they are authorized to issue fully paid up and non-assessable shares of stock of this company to the amount of ....., and to pay..... in cash in consideration of such ..... of the common stock and ..... of the preferred stock of the Northern Pacific Railway Company."

The amounts were filled in by the Secretary of the Company two or three days later. As to the form of this resolution and the method of adopting it, see Fols. 1365 to 1367, and 1127 to 1136 of the record.

The preferred stock so acquired from Harriman and Pearce was afterwards converted into common stock in accordance with the resolution for the retirement of the preferred stock already referred to, and the absolute control of both the Great Northern and the Northern Pacific Railway Com-

panies vested in the Northern Securities Company, as already stated prior to Jan. 1st, 1902.

On January 23rd, 1902, a joint circular letter was issued by the Freight Agents of the Great Northern and Northern Pacific Railway Companies, wherein the equalizing or competitive rate between all junction points along the lines of said railroads within the State of Minnesota was withdrawn, and agents at such points were directed to ship freight received at one junction point and destined for another junction point along the lines of the Great Northern and Northern Pacific Railway Companies within the State of Minnesota, via the shorter route, and stating to such agents that "*the longer line will not undertake to equalize the rates based on the shorter mileage of the other.*" (See Fols. 3592-3595 of the record).

The effect of this joint circular letter was to withdraw all competition for business between said railroads within the State of Minesota, and to compel the shipper to ship freight via the road having the shorter route, or else pay to the road having the longer route a greater freight rate; and not only was all competition, so far as rates were concerned, withdrawn or destroyed, but all effort to secure business and all the benefits resulting therefrom to shippers on the line of said railroads within the State of Minnesota, were absolutely destroyed; spur tracks and sidings, which had been constructed in order to obtain competitive business, and give conveniences and facilities to shippers on the Great Northern line, who might otherwise ship via the

Northern Pacific, were abandoned and removed and shippers were left to get their grain and products to the Railway Company as best they could; and when complaint was made by shippers to the Great Northern Railway Company's agents, accompanied with threats to transfer their business to the Northern Pacific unless these conveniences were restored, they were informed that it made no difference to the Great Northern whether it or the Northern Pacific got the business. It amounted to the same thing. This is shown by the undisputed testimony of various witnesses found at folios 2697 to 2916 inclusive, of the record.

On March 27th, 1902, another joint circular letter was issued withdrawing the previous orders, and re-establishing the competitive rates (See Fols. 3596 to 3601 of the record.

Between these dates and on March 10th, 1902, the Attorney General of the United States filed a bill against the Northern Securities Company, the Great Northern and Northern Pacific Railway Companies, to enjoin the consolidation of the two railway companies through and in the Northern Securities Company; and also between those dates the State of Minnesota, through the Governor and the Attorney General, had announced its intention to bring similar proceedings and the State filed its bill very shortly after March 27th, 1902.

The foregoing are some of the material and undisputed facts in this case, and form, among others, the basis on which the State has proceeded in this action.

The testimony of George F. Baker, Samuel Thorne and D. Willis James, together with the joint circular letters issued by the General Freight Agents of the Great Northern and Northern Pacific Railway Companies, withdrawing all competitive rates between junction points in the State of Minnesota, and other testimony showing that all competition in both rates and traffic had been withdrawn since the consolidation of these two railway companies in the Northern Securities Company, does not appear in the Federal case.

III.

ARGUMENT ON THE FACTS.

THE LINES OF THE GREAT NORTHERN AND NORTHERN PACIFIC RAILWAY COMPANIES ARE BOTH PARALLEL AND COMPETING THROUGHOUT NEARLY ALL THE TERRITORY TRAVERSED BY THEM WITHIN THE STATE OF MINNESOTA.

On this subject, Mr. Mellen, President of the Northern Pacific Railway Company, testified at Folio 2320 et seq., of the record as follows:

> "Q. The general direction of your main lines westward is through the States of Minnesota, North Dakota, Montana, Idaho and Washington?
>
> A. That is the general course.
>
> Q. Are those lines of the Northern Pacific and the lines of the Great Northern, for a large part of the territory through which they run and to many of the points which they reach, parallel and competing lines?
>
> A. They are.
>
> Q. And with reference to the State of Minnesota, Mr. Mellen, are not the Northern Pacific and the Great Northern lines almost generally parallel and competing lines?
>
> Mr. Kellogg: Do you mean all the lines?
>
> Mr. Lancaster: Practically all of them.
>
> A. Many of the lines are parallel and competing."

The fact that said lines are parallel and competing is conclusively shown by an examination of complainant's Exhibit number 9 at page 800, of the record, and complainant's Exhibit number 14, found at page 814, of the record.

This Court in the case of *Pearsal v. The Great Northern Railway Company*, 161 *U. S.* 670, decided that these lines were both parallel and competing within the State of Minnesota.

IV.

THE NORTHERN SECURITIES COMPANY WAS ORGANIZED SOLELY FOR THE PURPOSE OF CONSOLIDATING, AND UNIFYING THE CONTROL OF, THE GREAT NORTHERN AND NORTHERN PACIFIC RAILWAY COMPANIES, AND AS A MEANS OF EVADING THE LAWS OF THE STATE OF MINNESOTA PROHIBITING SUCH CONSOLIDATION.

The judicial history of the Great Northern and Northern Pacific Railway Companies discloses, among other things, that in 1895-6, effort was made by Mr. Hill and certain other stockholders of the Great Northern Railway Company, referred to in the testimony as Mr. Hill's associates, to consolidate the Northern Pacific Railway Company with the Great Northern Railway Company, by certain of the stockholders of the latter company acquiring a majority of the stock of the Northern Pacific Company. Mr. Pearsal, who was then a stockholder of the Great Northern Railway Company, instituted proceedings against that company to prevent such consolidation. This case finally reached this court, and it was decided that such attempted consolidation was in violation of the laws of the State of Minnesota. This is the case of *Pearsal v. the Great Northern Railway Company*, 161 U. S. 671.

From the time that case was decided down to

the organization of the Northern Securities Company, Mr. Hill and certain other stockholders of the Great Northern Railway Company, referred to in the testimony as Mr. Hill's associates, state they contemplated forming a holding company for the Great Northern Railway Company, but nothing was done in this matter until they were able to secure the control of the Northern Pacific Railway Company, when energetic and active work was began toward the organization of such a holding company.

Mr. Clough, then vice president of the Great Northern Railway Co., testified that during the summer and fall of 1901, both he and Mr. Grover, its general counsel, spent a great deal of time investigating charters of the State of Minnesota

"*that would be legislative contracts with the State of Minnesota, so that they would be beyond the power of amendments;*" (See Fol. 823 of the record).

and also that he and Mr. Grover spent much time in examining the laws of New York and New Jersey to find in which state a corporation could be most safely organized with powers sufficiently broad to give them all the rights they desired to exercise over the property of the Great Northern and Northern Pacific Railway Companies through the holding company.

After spending the summer and fall of 1901 on this matter and talking it over with Hill and his said associate stockholders of the Great Northern Railway Company, as well as certain stockholders of the Northern Pacific Railway Company, including a member of the firm of J. P. Morgan & Co., it was

decided to incorporate a holding company under the laws of New Jersey. As to the purpose and object of forming such a corporation, the parties who were directly interested in its organization and with whom Mr. Hill and Mr. Clough consulted during the time the charter was being drafted and the place of incubation decided upon, testified as follows:

GEO. F. BAKER.

Mr. Baker stated that he had been one of the stockholders of the Great Northern Railway Company for many years and formed one of the associates of Mr. Hill in that company who had always co-operated with him for the purpose of controlling the Great Northern Railway Company.

"Q. You mean between that time and the time it was actually formed, you had several talks with Mr. Hill about it?

A. Yes, sir. * * *

Q. Well, what was the nature of these conversations you had with Mr. Hill?

A. They were quite general in their way. We had been through an experience in the spring there—

Q. The May 9th affair you refer to?

A. Yes, when one of the Southern railway companies, the Union Pacific especially, was trying to get hold of our property, as we thought, and would turn the business from the Northwest to California. * * * Well, we felt we didn't want to have the Northern Pacific go into the hands of parties adverse to our interests.

Q. That is, you wanted the Northern Pacific and Great Northern stocks placed with some company where the control would remain permanently? That is what you had in mind?

A. We hoped so, sir.

Q. And that was one of the purposes that you and Mr. Hill talked over in forming this Northern Securities Company?

A. I presume so.

Q. That is, you and Mr. Hill and his other associates making up this coterie of Great Northern stockholders and also the holders of a majority of the common stock of the Northern Pacific, desired to have that stock placed where it could not be raided?

A. Yes, sir.

Q. And thus fix the control of those two companies in one spot, where you gentlemen would know where it was?

A. Yes, sir.

Q. Did Mr. Hill say that, in his judgment, that purpose could be accomplished by the formation of this Northern Securities Company?

A. I can't remember that he ever said so.

Q. Well, that is what you expected, of course?

A. Yes, sir.

Q. Both you and Mr. Hill and your other associates?

A. I am speaking for myself.

Q. That was your understanding of it?

A. Yes, sir.

Q. You consented to the formation of such a company?

A. Well, I made no objection.

Q. Did Mr. Hill tell you about how much stock would be turned in, as far as the Great Northern Company was concerned?

A. No, sir.

Q. You and Mr. Hill and the other gentlemen making up this coterie of Great Northern stockholders were all desirous during this time of keeping this stockholding in the Great Northern permanently in one place?

A. Yes, sir.

Q. What was your desire in doing that?

Why did you wish it?

A. Principally that some of us—some of them—were getting old, and we thought it was desirable to keep the thing together; we had talked of that for several years.

Q. That is, you wanted to fix the control of the Great Northern through a stockholding in the Northern Securities Company?

A. Yes, sir.

Q. And this coterie of stockholders had always been able to control the Great Northern Railway Company?

A. We had.

Q. And you expected when you transferred those holdings of the Great Northern Railway Company to the Northern Securities Company that the corporation would be able perpetually to control the Great Northern Railway Company by that stockholding? That was your expectation?

A. Well, that would depend on whether it was all put in or not.

Q. Yes, but that was your expectation?

A. That is what we hoped for; yes, sir.

Q. And that is what you hoped for when you were discussing the advisability of forming this Northern Securities Company?

A. Well, we discussed that very little, as far as I was concerned.

Q. Well, that is what you had in mind.

A. Yes, sir.

Q. That was the purpose of the formation of this company—the Northern Securities Company?

A. Well, I can't say what was the purpose of the men that got it up; they were more instrumental in it than I was.

Q. As far as you were concerned that was your purpose and you understood that to be their purpose?

A. Yes, sir.

Q. And also to control the Northern Pacific, of course, through this majority of the common stock?

A. Yes, sir. * * *

Q. And you understood those to be the purposes of Mr. Hill, did you not?

A. Practically, yes.

Q. And you got that from your conversation with him, of course?

A. Practically; yes, sir." (See Folios 1612 to 1624 and folio 1638 of the record).

Again on re-direct examination on this same subject, Mr. Baker testified, at folios 1662-3 of the record as follows:

"Q. Well, leaving out the basis of exchange, then, you knew prior to the time that the Northern Securities Company was formed that such a company was to be formed for the purpose of taking over the stock of both the Great Northern and Northern Pacific in order to effect this control that you have spoken about?

A. Yes, sir.

Q. Now, Mr. Baker, you say that one reason you had for exchanging your stock was that you thought it would make your stock more valuable. What additional value could be given to your stock by exchanging it for the Northern Securities Company stock?

A. Perhaps I should have expressed that better by saying I hoped it would keep it from being depreciated in value.

Q. That is, you thought by the organization of the Northern Securities Company and the taking over of the stock of both the Great Northern and Northern Pacific by that company, that the permanent control of those two corporations would be fixed in one place?

A. If it would prevent it going into the hands of the other companies that were seeking to control it, it would be more valuable than if we should lose control of the property.

Q. That is, then, you had in mind that by fixing the ownership of Great Northern and Northern Pacific stock in one holding com-

pany, you would thus permanently fix the control of those two companies so that they could not be assailed by any outside influence?

A. Yes, sir.

Q. That was what you understood to be the purpose?

A. In a general way, yes.

Q. And you thought that was a desirable thing to do?

A. Yes, sir."

SAMUEL THORNE.

On this same subject, Mr. Thorne testified, at folios 1689 to 1746 inclusive, of the record as follows:

"A. I had talked to Mr. Hill about the organization of this company, but nothing as to the name.

Q. Your talks were more to the purposes and objects of the corporation, rather than the name of it?

A. Yes.

Q. Now, was one of the purposes which you discussed with Mr. Hill the holding of the stock of the Great Northern Railway, which you and Mr. Hill and the other gentlemen making up this coterie had held for some time prior to that?

A. Well, yes.

Q. Did you also talk about holding the stock of the Northern Pacific in this same company?

A. Not in the beginning; I did not, sir.

Q. Well, I don't care about the beginning, but during the year 1901?

A. Yes, during the year 1901 I did.

Q. That is, you talked to Mr. Hill during the year 1901 about organizing a corporation which should hold the Northern Pacific stock and the Great Northern stock?

A. Yes.

Q. Why were you desirous of forming a corporation to hold the stock of these two railway companies?

A. Well, as I told you, my interest was in the Great Northern Railway Company; my interest was not in the Northern Pacific.

Q. But you had acquired some interest in the Northern Pacific?

Witness: My object was to protect the interests which I held in the Great Northern.

Q. That is, your object in forming the Northern Securities Company was to protect the interests which you had in the Great Northern?

A. Yes.

Q. Was anything said during these talks with Mr. Hill about your interests in the Great Northern being more secure and better protected provided the Northern Pacific common stock was turned over to this holding company?

A. I don't remember having any talk with Mr. Hill about it at all until after the effort was made to get control of the Northern Pacific stock.

Q. Let me state, Mr. Thorne, that in the questions I ask now I am confining myself to the year 1901; not prior to that time.

A. Yes, sir. * * *

Q. How did you come to be talking to Mr. Hill, then, about this holding company, or the company which was to be formed, acquiring the stock of the Northern Pacific? What was said in that connection? What led up to it?

A. *Well, of course, it became self-evident to me that it was to the interest of the Great Northern Company that the Northern Pacific stock should be put in such condition that it could not be used against the interests of the Great Northern Company.*

Q. That is, the stock of the Northern Pacific should be put so that it could not be used

against the interests of the Great Northern Company?

A. Yes.

Q. That is, in these talks it was stated by Mr. Hill and yourself that it would be for the interests of the Great Northern Railway Company to have the ownership—

A. (Interrupting). I don't think we ever discussed it. It was self-evident to me. I don't think we ever discussed that question at all.

Q. The parties, then, who had in view the formation of the Northern Securities Company, including yourself, were of the belief that it was for your interests—

A. (Interrupting). That was my belief. I don't know about the others.

Q. Your belief, then, was—in the part that you took in the formation of the Northern Securities Company—that it was for your interests as a stockholder of the Great Northern Railway Company that the control of the stock of the Northern Pacific should be placed where it would be permanently fixed, so that it could not be used against the Great Northern?

A. Yes.

Q. You knew, did you not, when you were having these talks with Mr. Hill, that Mr. Morgan and his associates owned a majority of the common stock of the Northern Pacific?

A. I knew it after it was known by everybody; I didn't know it before.

Q. You knew during the summer of 1901 that such was the fact?

A. Yes, I knew it was said to be the fact. I didn't know it of my own knowledge. Mr. Morgan had not told me so.

Q. And you also knew that it took the holdings of Mr. Hill and yourself and some other stockholders of the Great Northern Railway Company to make up the majority of the common stock of the Northern Pacific?

A. Ask that again, please.

Q. You knew, Mr. Thorne, at this time that

it took the holdings of Mr. Hill and yourself and your associates in the Northern Pacific stock to make up a majority of that stock, together with those of Mr. Morgan.

A. That is what I supposed.

Q. Now, Mr. Thorne, did Mr. Hill tell you in any of these talks that he had with you in the summer of 1904 regarding the formation of the Northern Securities Company, that Mr. Morgan and his associates would turn their holdings of Northern Pacific common stock into this Northern Securities Company?

A. I can't recall whether he did or not, sir. I don't know.

Q. Well, you say you were desirous of having the Northern Pacific stock, at least, fixed in some holding company?

A. Yes.

Q. Now, didn't Mr. Hill tell you that—

A. (Interrupting). Possibly he may, but I don't remember.

Q. Then how did you know that that would be accomplished by the organization of the Northern Securities Company?

A. I didn't know it. I took for granted it would be. Of course, it was to their interest to do it.

Q. Then, it was generally understood between you and your associate holders of Great Northern stock that by the formation of the Northern Securities Company the control of the Northern Pacific would be placed in the manner you have indicated?

Mr. Clough: What do you mean by "generally understood?"

Witness: Well, I was going to ask what you meant by "generally understood." I can only answer for myself. I never had any talks with any other gentlemen as to whether they were going to put their stock in or were not going to put their stock in.

Q. How did you come to assume it would be done?

A. Because it was so evident on its face.

Q. Mr. Thorne, didn't you talk with Mr. John S. Kennedy about it?

A. Oh, yes; I talked to Mr. Kennedy; I talked to several of the people—Mr. James.

Q. Did you talk to Mr. James about it?

A. I did, sir.

Q. Did you talk with Col. Clough about it?

A. I think very possibly so.

Q. Did you talk with Mr. Baker about it?

A. I think that is probable, too.

Q. Did they all express the same belief regarding this matter that you entertained?

A. I should think they did; I think they were all of the same mind.

Q. Therefore, you did know that these other gentlemen—

A. (Interrupting). I only knew we all thought it would be for our interests.

Q. When you say "for our interests," you mean as stockholders of the Great Northern?

A. Yes, I mean our individual interests as stockholders of the Great Northern Railway Company.

Q. Then, to sum it all up, Mr. Thorne, the purpose you had in mind in consenting to turn your stock in to the Northern Securities Company—your stock in both the Great Northern and the Northern Pacific was to fix the control of the Northern Pacific in a permanent way so that it could never be used to assail your interests in the Great Northern?

A. In taking the Northern Securities Company stock my interest was in both of the companies.

Q. Yes, but you have testified that your interests were largely with the Great Northern.

A. Yes, they were—more largely with the Great Northern than with the Northern Pacific.

Q. And it was that interest and ownership that you desired to protect?

A. *Yes. But when I became a shareholder in the Northern Securities Company then of*

course I recognized the fact that it would be for the interest of both of those properties to be together, where they would not antagonize one another to their harm.

Q. You mean, then, that it was for the interests of the stockholders of both companies that the stock of those two companies should be held by one corporation, so they would not antagonize one another?

A. So no person could get possession of the one to antagonize the other.

D. WILLIS JAMES.

On this same subject Mr. James testified at folios 1750 to 1754 of the record, as follows:

"Q. Now, with whom did you talk besides Mr. Clough regarding the formation of the Northern Securities Company?

A. You mean in 1901?

Q. Yes.

A. With no one. Possibly once with Mr. Hill, but I cannot swear to that, I can't be sure that I did. Mr. Kennedy was away and I had no conversation with any one except Col. Clough until after I met Mr. Kennedy some time late in the summer, probably in August or the end of July, at Bar Harbor.

Q. Did you talk with him then about it?

A. I had some conversation with him about it; yes, sir.

Q. What talk did you have with him about it?

A. Only to the extent that he had had some conversation of importance soon after the raid of the 9th of May; that some holding company or something of that character, should be organized to carry out the designs or the plans we had had for so many years past, and it seemed to be—

Q. What plans or designs do you refer to?

A. Having some company or some way—trust company or some other way—by which

these gentlemen that you have referred to should hold their stock together, in case of death or other emergency.

Q. Why did you desire to keep that stock together, Mr. James?

A. Because as I said before, sir; we thought that it was for the interests of the company, the interests of the territory that was served by it, *and our own personal interests.*

Q. Were you afraid, after the raid of May 9th, that some other company or some other set of people might come in and attempt to buy a controlling interest in the Great Northern Railway Company?

A. Of course, the raid that was made upon the Northern Pacific at that time did indicate and show that it was within the possibilities that a raid could be made on the Great Northern.

Q. And you desired to have your interests united in such a way that you could always co-operate in opposition to any such plan?

A. Yes, sir."

And again at folio 1759 of the record, Mr. James stated:

"Q. And you understood the plan to be to turn in the holdings of these gentlemen in the Northern Pacific, including Mr. Morgan?

A. Yes, sir.

Q. Into this Northern Securities Company?

A. Yes.

Q. That would give the Northern Securities Company a majority of the common stock of the Northern Pacific?

A. Yes, sir.

Q. And you gentlemen were to turn in the holdings that you had in the Great Northern Railway Company?

A. Yes, sir.

Q. And I suppose the company was to acquire such other Great Northern stock as the

stockholders saw fit to surrender.

A. That was afterwards discussed and it was considered that it was fair and right to offer it to the other stockholders, because the Great Northern Railroad had never had any inside rings of any kind.

Q. Now, Mr. James, when was the understanding reached that you gentlemen should turn in all of your Northern Pacific common stock (which was a majority) and such Great Northern stock as yourself and Mr. Hill and his friends and associates (forming the coterie you have referred to) held?

A. I can't fix the date. I should think it was probably the end of October or early in November.

Q. That was prior to the time the Northern Securities was actually organized, of course?

A. I don't know the date when the Northern Securities Company was organized.

Q. It was organized November 13, 1901.

A. I didn't know that.

Q. So that before the Northern Securities Company was actually organized as a corporation, it had been agreed between you and Mr. Hill and Mr. Kennedy and the other gentlemen forming the coterie who held about 35 millions of the Great Northern stock, and yourselves and Mr. Morgan and the other holders of the 42 millions of Northern Pacific stock, that that should all be turned in to the Northern Securities Company when organized?

A. Yes, sir."

J. S. KENNEDY.

Mr. Kennedy testified on this subject, at folio 1461 of the record, as follows:

Q. It was the expectation and purpose of you gentlemen at that time, when you conceived the idea of organizing the Northern Securities Company, to acquire the stocks of

both roads. I say it was your expectation and intention and purpose to have the new Securities Company acquire a majority of the stocks of both roads, the Great Northern and the Northern Pacific, was it not?

A. It was our intention to have a majority of the Northern Pacific, but as to the Great Northern, it was simply an intention to let the members in who chose to come in, and it remained to be seen whether it would be a majority or minority.

Q. Why did you plan on getting a majority of the Northern Pacific and not of the Great Northern, Mr. Kennedy?

A. Well, my idea was in consequence of what took place last May; we didn't want to be subjected to such an attack as took place last year.

Q. You wanted to have a majority of the stock of the Northern Pacific where you could absolutely control it?

A. Yes, sir.

Q. Under all circumstances?

A. Under all circumstances.

Q. And so far as the Great Northern road was concerned it was regarded as practically certain to all intents and purposes that Mr. Hill, yourself, J. Pierpont Morgan and George F. Baker controlled the Great Northern?

A. I don't remember anything of the kind ever coming up.

Q. Weren't you equally anxious to prevent the possibility of such an occurrence with reference to the Great Northern?

A. I think those who were called Mr. Hill's associates had enough stock to prevent anything of that kind.

Q. That is what I am getting at, so that when you planned absolutely to hold a majority of the Northern Pacific and have that turned into the securities company and to turn in the stock of yourself and Mr. Hill's associates in the Great Northern, you knew that you were

controlling enough stock of the Great Northern so it could not be purchased by a rival interest?

A. I don't know that absolutely.

Q. You felt pretty certain of it?

A. I thought it was probable.

Q. You were just as anxious to prevent an attempt to buy up a majority of the Great Northern by a rival interest as you were to prevent an attempt to buy up a majority of the Northern Pacific, weren't you?

A. I didn't want an attack in either case.

Q. That is what I am getting at—that is, a purchase by a rival interest of a majority of the stock of either the Great Northern or the Northern Pacific was a thing which you were trying to prevent, was it not?

A. Yes, sir; that was our idea; at least, that was my idea. I speak for myself."

J. P. MORGAN.

Mr. Morgan talked with Mr. Hill about forming the Northern Securities Company and at folio 2189 of the record, states the result of that conversation.

"Q. What was the result of your talk with Mr. Hill?

A. The result of it was that we decided that the Northern Pacific, so far as I was concerned as a stockholder in the Northern Pacific, I would put my stock in provided that he would take everybody else's into this thing that he had proposed to arrange for the Great Northern.

Q. That is this Northern Securities Company?

A. Yes.

Q. That is, provided he would go in himself?

A. Yes, of course. Well, I didn't care whether he went in or not. We had a majority without him. I wanted a majority of the Northern Pacific stock in that securities com-

pany; I didn't care who went in, provided there was enough there to protect the Northern Pacific."

J. J. HILL.

Mr. Hill testified regarding this matter at folio 457 et seq. of the record as follows:

"Q. What steps, if any, have been taken by you and your associates and Mr. Morgan and his associates with reference to the organization of the Northern Securities Company prior to November 13th, 1901?

A. The Northern Securities Company or a company of that character, has been considered by the large shareholders of the Great Northern Railway Company for several years.

Q. And for what purpose, Mr. Hill?

A. For the purpose of combining their interest in the property.

Q. And what was the object or purpose of the combination?

A. Some of them were very old men and they had always acted together and in harmony, and they desired to perpetuate that action.

Q. What amount of stock, par value, of the Great Northern road did those men that you now speak of hold prior to November 13, 1901, in the Great Northern road?

A. Oh, I don't think there was any material change in their holding for a long time. I could not say about November 13.

Q. About.

A. On the 1st of November I should say they held somewhere from thirty-three to thirty-five millions.

Q. And were you among the number?

A. Yes, sir.

Q. And was that the purpose and object, Mr. Hill, of your organizing the Northern Securities Company?

A. That was the purpose.

Q. And at the time of the organization of the Northern Securities Company were these things that you have told us the only objects or purposes that you had in mind at that time?

A. The action in buying the majority of the stock of the Northern Pacific in the market in April or May, or both, brought the question up more strongly than before as to the necessity of the Great Northern old shareholders who had been continuously connected with the property from the beginning, making their holding together permanent; and, I think, in June, somewhere about the 5th or 6th of June, speaking from recollection, Mr. Kennedy, on his return from Europe discussed the matter with me going over the entire situation, the relations of the Burlington; the relations growing out of the large purchases by the Union Pacific interests of the Northern Pacific, and suggested whether we should not include in our holding company our holdings in the Northern Pacific.

Q.—And for the same purpose?

A. For the same purpose, so that we would all act together and no one would sell out or leave the others. We would all act together.

Q. For the purpose of unifying the interests that you had in the two roads?

A. Yes, sir; for the purpose of unifying the interests in each road; because when the Burlington was transferred or sold to the Northern Pacific and the Great Northern jointly, our owning an equal share in the company, it was a matter of great consequence to the Great Northern as to who would own the stock of the Northern Pacific or control the Northern Pacific, and some of our shareholders—some of them are 86 years old, others are more than 80 and so on—they might have concluded that they would sell their stock, and it might have made a difference as to the majority of the common stock."

From the foregoing testimony it is clear that the controlling stockholders of the Great Northern Railway Company, including Mr. Hill; and the controlling stockholders of the Northern Pacific Company, including Mr. Morgan, agreed during the summer and fall of 1901 to organize the Northern Securities Company, for the purpose of turning over to that company the absolute control of both railway companies and thus to place the property of the two railway companies under a single or unified management, and to prevent either company doing any act hostile to the interests of the other, or entering into competition with the other, so as to lower rates or solicit business; in other words, to as effectively stifle competition and destroy whatever benefit might result therefrom to the public, as though the entire system of railroads of each company within the State of Minnesota were owned and controlled by a single operating railroad corporation or individual.

V.

IN ADDITION TO THE TESTIMONY AND FACTS ABOVE QUOTED AND REFERRED TO, THE CONDUCT AND ACTS OF MR. HILL AND MR. MORGAN AND THEIR ASSOCIATES, CONCLUSIVELY SHOW THAT THE PURPOSE AND OBJECT OF THE INCORPORATORS OF THE NORTHERN SECURITIES COMPANY WAS TO CONSOLIDATE AND CONTROL THE PROPERTY AND LINES OF THE GREAT NORTHERN AND NORTHERN PACIFIC RAILWAY COMPANIES.

(a) The basis of exchange of the Northern Securities stock for the Great Northern and Northern Pacific was fixed by Mr. Hill early in July, 1901, nearly five months prior to the organization of the Northern Securities Company. This basis was arbitrarily fixed by Mr. Hill and not based upon the market value of the stock of either of said Railway Companies at that time or at the time the exchange was made. Relative to fixing the basis of exchange, Mr. Hill testified at folio 471, of the record, as follows:

> "Q. Well, then, at the time you formed the Northern Securities Company, organized the Northern Securities Company, had you agreed upon the basis at which the Northern Pacific stock should be turned into the Northern Securities company in exchange for Northern Securities stock, as well as the basis on which the Northern Pacific stock should be turned in in exchange?
>
> A. My recollection of that is that possibly in my interview with Mr. Kennedy, early in June, soon after his return from Europe, that the question came up as to how, if we put our

own holdings into a company, upon what basis this stock would go in, and he asked me to turn it over. Maybe I wrote him and maybe I saw him; but I think the basis—I think, after consulting with two or three of the shareholders, I fixed the rate upon which each, the Northern Pacific and the Great Northern, would be taken or purchased by the holding company when such holding company was organized.

Q. Was that rate, Mr. Hill, that you fixed $1.15 for the Northern Pacific, and $1.80 for Great Northern?

A. That was right.

Again, at folio 482, of the record, Mr. Hill stated:

"Q. Mr. Hill, I understood you, yesterday, to say that in the matter of the basis upon which the Northern Pacific common was to be turned into the Northern Securities Company and the stock of the Great Northern, that you fixed that basis yourself. Is that correct?

A. I recollect, or as I recollect it, the figures I suggested were adopted and considered right by the parties whom I consulted.

Q. And what considerations determined $1.15 for the Northern Pacific common, Mr. Hill? What were the chief considerations which determined that amount with you and your associates?

A. The value of the property, the property taken as a whole; its capacity to earn money, its land grant, and the situation in the country, and so on.

Q. Did the market value of the stock at that particular time—

A. The stock hadn't a market quotation at the time that I suggested the figure. My recollection is that at the time that the figure was suggested or named it was midsummer.

Q. And at the time when you suggested

that figure and that was determined upon, the Northern Pacific common was practically out of the market, wasn't it?

A. I think so; not quoted.

Q. And was not being sold in the stock markets?

A. No transactions.

Q. Was the Great Northern stock being sold at the time when the $1.80 was agreed upon?

A. When that rate was named, Great Northern was selling on the market.

Q. And at what figure?

A. My recollection is about $1.95.

Q. At the time when it was agreed to put it into the Northern Securities Company at $1.80?

A. Yes, sir.

Q. And had it been selling at $1.95 for any length of time previous to that?

A. Oh, yes; it had been selling; it sold up to $2.

Q. Was $2 the highest point it had reached?

A. I don't recall the figures; possibly something over 200. I don't carry those figures in my mind.

Q. I understood you to say, Mr. Hill, that you suggested the price and it met with approval and that that was actually—

A. The approval of those with whom I consulted, and they were very few, and this was simply a stockholders' affair acting individually, and a circular was subsequently prepared after the formation of the company; but before that it was limited to a very few people, and in that connection let me say there was no agreement or formal undertaking.

Q. In that connection will you give me the names of the very few stockholders with whom you consulted and to whom you suggested the $1.15 and $1.80 as the prices of exchange?

A. I think the suggestions were mainly

confined to Mr. Kennedy, Mr. James, Mr. Thorne, Mr. Sterling and Mr. Baker. Now, it might have been suggested to some others; probably Mr. Clark.

Q. Did any of those gentlemen whose names you have given represent J. Pierpont Morgan & Co.?

A. No, sir."

This basis of exchange was fixed by Mr. Hill in June or the early part of July, 1901, nearly five months before the Northern Securities Company was organized. After the organization of the latter company, no consideration was given by it to this matter. On the very day of its organization, and before it had selected its permanent Board of Directors, or elected officers, the three clerks selected by the promoters of this scheme, passed resolutions carrying out Mr. Hill and Mr. Morgan's previous agreement on this subject. What can more conclusively show that the Northern Securities Company was organized for the purpose of consolidating these two Railway Companies and not as an investment company?

(b) The basis of exchange for the stock of the Union Pacific interests and the amount to be paid therefor was fixed by Mr. Morgan and Mr. Hill prior to the organization of the Northern Securities Company. Mr. Morgan and Mr. Hill agreed to have issued to Harriman and Pearce, representing the Union Pacific interests, $82,492,871 par value of the Northern Securities stock when organized and issued, and to have $8,915,629 paid in cash;

and two days after the organization of the Northern Securities Company, this action was reported to the Board of Directors and a resolution adopted carrying out such action (See fols. 1322 and 1129, of the record.

If the promoters of the Northern Securities Company intended only to organize an investment company, they certainly would not have paid a cash premium to the Harriman and Pearce interests of $8,915,629 over and above the amount fixed by Mr. Hill as the price at which the Northern Pacific should be exchanged for the Northern Securities Company stock. Harriman and Pearce received not only the full amount they were entitled to in the stock of the Northern Securities Company on the basis fixed by Mr. Hill for the exchange, but also that amount of cash in the way of a premium in addition. (See fols. 1128 to 1145; also Fols. 1364 to 1375, of the record).

J. P. Morgan & Co. began negotiating for the acquisition of the Harriman and Pearce holdings of Northern Pacific stock for the Northern Securities Co. about two months prior to the organization of that company. (See folios 2314 & 1964).

In this connection it is to be noted that the Northern Securities Company has never attempted to, nor has it ever purchased any other stocks or securities than those of the Northern Pacific and Great Northern Railway Companies, or the property and franchises of such companies.

(c) The amount of the stock of the Northern Securities Company stock, when organized, was fixed at $400,000,000, which was the amount necessary to be issued to obtain all of the outstanding stock of the Northern Pacific and Great Northern Railway Companies on the basis of exchange fixed by Mr. Hill prior to the organization of the Northern Securities Company.

(d) As soon as the Northern Securities Company was organized, it sent a circular letter to all of the stockholders of the Great Northern Railway Company, urging them to exchange their stock in that Company for the stock of the Northern Securities Company. (See Defendant's Exhibits "A" and "B," pages 1048-1050, of the record).

The promoters of the Northern Securities Company had an agreement with the holders of at least a majority of the common stock of the Northern Pacific Railway Company that they would exchange that stock for the stock of the Northern Securities Company as soon as organized; and also an agreement that the preferred stock of the Northern Pacific should be retired on the first day of January following, and converted into common stock, most of which would then go to the Northern Securities Company under the plan of retirement; thus giving the Northern Securities Company substantially all of the stock of the Northern Pacific Railway Company. Thus it was not necessary, nor was any circular letter sent to the stockholders of the Northern Pacific Railway Company so-

R2 To these Folios 1762, 1703-06, 1588-89

liciting the exchange of that stock. But under the arrangement and agreement, the Northern Securities Company would have a minority of the Great Northern stock, but as its promoters believed, sufficient so that they could control the Great Northern Railway Company, unless a combination was formed against them. This is shown by the testimony of Kennedy and others already quoted in this brief.

(e) If the promoters of the Northern Securities Company intended only to organize an investment company and not a corporation to consolidate and control the Great Northern and Northern Pacific Railway Companies lines and properties, why was it necessary for, and why did these promoters agree to, and thereafter retire the preferred stock of the Northern Pacific Railway Company, so as to obtain control of that company and its property and franchises? Purely as an investment company, the preferred stock of the Northern Pacific Railway Company would have been just as valuable to the Northern Securities Company as the common. In case it could not secure the preferred and common stock of the Northern Pacific owned by Harriman and Pearce, and which combined made a majority of the Northern Pacific stock, then other securities deemed equally good could have been purchased.

(f) If the Northern Securities Company was organized to act simply as an investment company, why did its promoters hesitate to place in its name a majority of the Great Northern stock, and in-

stead of taking the actual title to such stock, place 50 per cent of the stock acquired by it in the name of its clerks, as trustees for it? If, as Mr. Clough testified, this was done in order to have stock to be pledged in case of loans being made, it is remarkable that one-half of the Great Northern stock acquired by it should be so placed in the name of trustees and none of the Northern Pacific stock. Surely the Northern Pacific stock was as good collateral as the Great Northern; and it is still more remarkable that none of the Great Northern stock was so placed until the Governor of this State announced his intention to proceed against the Northen Securities Company on the ground that it intended to acquire all or a majority of the stock of both railway companies for the purpose of control.

(g) If the Northern Securities Company was organized solely as an investment company, there was no occasion for Mr. Morgan's famous definition of "community of interest." When Mr. Morgan was being examined as to his purpose in trying to get control of the Northern Pacific from the interests represented by Harriman and Pearce, in order that control of the Northern Pacific might be turned over to the holding company when organized, he testified as follows:

> "Q. Mr. Morgan, you know that the Union Pacific, of course, was a competing line with the Burlington. You know that it had attempted to wrest your property away from you; what was the object of putting their representatives on the board?
>
> A. Simply to show that there was nothing

that the Northern Pacific management, or J. P. Morgan & Co., or anybody, which had bought the Burlington, to show that they were acting under what we know as a community of interest principle, and that we were not going to have that battle on Wall street. *There was not going to be people standing up there fighting each other.*

Q. What is community of interest?

A. *The community of interests is that principle that a certain number of men who own property can do what they like with it.*

Q. But they shan't fight one another?

A. There is no fighting about it. If they choose to fight their own property—but people don't generally do that.

Q. Is not this community of interest idea one of working harmony?

A. Working in harmony—yes.

Q. Even though they own competing and parallel lines?

A. No, *they own them all.*" (See Fol. 2170 and 2171, of the record).

(h) THE LANGUAGE ADOPTED BY THE INCORPORATORS OF THE NORTHERN SECURITIES COMPANY IN THE ARTICLES OF INCORPORATION, WHEN CONSIDERED IN CONNECTION WITH THE CHARTERS AND BY-LAWS OF THE GREAT NORTHERN AND NORTHERN PACIFIC RAILWAY COMPANIES, CLEARLY SHOWS THAT THE SOLE PURPOSE OF THE NORTHERN SECURITIES COMPANY WAS TO ACQUIRE THE POWER TO ABSOLUTELY CONTROL THE TWO RAILWAY CORPORATIONS.

The charter of the Great Northern Railway Company provides that "all the affairs and business of said company shall be conducted by or under the direction of a Board of Directors, and they are au-

thorized to do all things necessary to be done." (See Appellee's Exhibit "D," page 1092, of the record).

The charter of the Northern Pacific Railway Company provides that "All the affairs of said company shall be managed by a Board of Directors, * * * who are hereby invested with all the powers of the corporation." (See Appellee's Exhibit "E," found at page 1125, of the record).

Each share of stock is entitled to one vote at any stockholders' meeting for the purpose of electing directors of said railway companies.

The by-laws of the Great Northern Railway Company provide for the appointment of an executive committee from the Board of Directors, consisting of three persons, of whom the president of the company shall be one; and this executive committee can be authorized to transact all the business of the Railway Company for and on behalf of the Board of Directors. (See Appellee's Exhibit "J," page 1183 of the record).

Substantially the same provision is made for the appointment of an executive committee and the transaction of the business of the company, in the By-Laws of the Northern Pacific Railway Company. (See page 1172, of the record).

The charter of the Northern Securities Company in stating the objects for which the corporation is formd, specifies the objects to be

"to acquire by purchase, subscription OR OTHERWISE * * * any shares of capital *stock created or issued by any other corporation*

*or corporations, association or associations of the State of New Jersey, or of any other state, territory or country * * * and while owner thereof, to exercise all the rights, powers and pririleges of ownership, including the right to vote thereon * * * and to do any acts or things designed to PROTECT, PRESERVE, IMPROVE OR ENHANCE the value of any such securities."*

It further provides, "*The Board of Directors of the corporation shall be fixed from time to time by the by-laws.*"

The charter further provides that "*The Board of Directors may appoint from the Directors of the executive committee, of which a majority shall constitute a quorum',' leaving it to the Board to fix the number of the executive committee.*

The charter further provides that "*The Board of Directors may make by-laws and from time to time alter, amend or repeal any by-law.*"

The clear purpose of the charter of the Northern Securities Company was to provide for unlimited power for the corporation, and to concentrate such power in a very limited number of persons. This is further shown by the provision in the charter which permits the Board of Directors to provide in the By-laws that less than a majority may constitute a quorum of the Board and to determine "*whether and to what extent and at what time and place and under what conditions and regulations the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account, book or document of the*

corporation, except as conferred by the statute of the State of New Jersey when authorized by the Board of Directors."

What more complete device could be adopted for placing the control of the corporations, the majority of whose stock is owned by the Northern Securities Company, than the one disclosed by these Articles of Incorporation? What scheme more complete, for the consolidated control of two or more railway companies, owning parallel or competing lines, could be devised, than a corporation with the unlimited powers and concentrated government provided for in these articles?

If the purpose of the Northern Securities Company was simply to act as an independent investment company and not to consolidate and control competing lines of railway, why was it necessary to spend months investigating charters of the State to obtain a legislative *contract beyond amendment*, or to find a state whose laws permitted the creation of a corporation with such unlimited powers, coupled with the authority in the incorporators to concentrate such powers in the hands of two or three men?

When these facts are considered in connection with the testimony of Mr. Baker, Mr. Thorne, Mr. James and Mr. Kennedy as to their conversations with Mr. Hill and Mr. Clough, the two men most instrumental in consummating this scheme, the conclusion seems irresistable that the sole and only purpose of the Northern Securities Company was and is to place the absolute control of the Great

Northern and Northern Pacific Railway Companies under a single head.

(i) If further proof is needed of the purpose and intent of the incorporators of the Northern Securities Company as consummated in the organization of that company, it is found in the results immediately following the acquisition by it of a majority of the stock of the two railway companies.

In less than thirty days after the Northern Securities Company had obtained a clear majority of both the Great Northern and Northern Pacific Railway Companies stocks and elected Mr. Hill, the President of the Great Northern Railway Company, President of the Northern Securities Company, and appointed an executive committee of three, of which the same Mr. Hill is Chairman, a joint circular letter was issued by the Great Northern and Northern Pacific Railway Companies, withdrawing all equalizing and competitive rates between the Northern Pacific and Great Northern Railway Companies within the State of Minnesota and elsewhere.

These joint circular letters or orders provide, among other things, the following:

> "Freight shipments from one junction point to another junction point will be forwarded via the line having the shorter mileage and lower rates. *The longer line will not undertake to equalize the rates based on the shorter mileage of the other.* * * * Any former instructions conflicting with the above are hereby cancelled." (See Exhibits 27-8-9 at folios 3592 to 3609 inclusive, of the record).

L. T. Stodder, one of the Freight Agents of the Northern Pacific, testified that these instructions withdrew all competition and required the shipper to either pay the distance or higher tariff or ship via the shorter route. (See Fols. 2745 et seq., of the record).

Not only was all competition withdrawn, so far as rates were concerned, but after January 1st, 1901, there was no competition for business between the Great Northern and Northern Pacific Companies within the State of Minnesota. This resulted in depriving shippers of many rights enjoyed prior to that time, and also in imposing many additional inconveniences to shippers along such lines.

A. J. Wright testified that this necessitated shipping his manufactured products from Moorhead when going to junction points along the Great Northern via that road, or else pay what was practically a prohibited tariff to the Northern Pacific. This resulted in delays of from two to five days on articles shipped by him to junction points on one road, unless he was willing to pay a very high freight rate over the other road. (See Fols. 2697 et seq., of the record).

Mr. O. C. Beck testified to substantially the same thing, giving the reasons why such was the case. (See Fols. 2790 et seq., of the record).

Mr. Frank A. Weld, President of the Normal School situated at Moorhead, Minn., testified that

prior to Nov. 13, 1901, sharp competition had existed between the Northern Pacific and Great Northern Railway Companies at their junction point at Moorhead, for the patronage of the State Normal School, and the use of a parlor car had been extended to students and teachers traveling in a body upon the Northern Pacific Railroad without extra charge, but since the organization of the Northern Securities Company, the patronage of the students and teachers had not been solicited or this courtesy extended. (Fols. 2761 to 2784).

Addison Leach, who is a joint owner of several thousand acres of land, the center of which is situated about two and one-half miles from the Northern Pacific and a little less than four and one-half from the Great Northern Line of railway, a short distance west of the western boundary of the State of Minnesota, testified that during the past fifteen years he has shipped annually large quantities of grain over the Great Northern railway, sometimes aggregating as high as one hundred and fifty thousand bushels in a single year. In 1887 the lessor of the Great Northern built a spur track from its station to the farm buildings of Mr. Leach situated in the center of his farm, and since that time the Great Northern Railway and its lessors continuously until Sept. 12, 1902, furnished cars to Mr. Leach for the purpose of shipment of his grain upon this spur track. Sept. 10, 1902, the first season after the organization of the Northern Securities Company twelve cars were furnished and placed upon

this spur track for Mr. Leach's use in loading and sixteen others promised for Sept. 12th. On Sept. 12, 1902, the Great Northern Railway Company refused to furnish the cars promised and took up the spur track for the full distance of four and one-half miles to the main line. It appears from the evidence of Mr. Leach that relations between him and the railway company were pleasant and no excuse furnished except business reasons required it. (See Fols. 2834 to 2959).

Mr. Weidemann testified to many inconveniences suffered after Sept. 1st, 1902. (See Fols. 2872 et seq., of the record).

The following is a statement, chronologically arranged, of the events leading up and relating to this consolidation:

(1) January 1st, 1901, J. P. Morgan dissolved the voting trust of the Northern Pacific Railway Company.

(2) During the same month (Mr. Hill says about the middle), Hill and Morgan began negotiations for the purchase of the Chicago, Burlington & Quincy Railroad Company. Folios 231–238

(3) During February, 1901, Hill and Morgan continue negotiations for the purchase of the C. B. & Q. Co.

(4) In March, 1901, Harriman, representing the Union Pacific interests, asked to be allowed to participate in the Burlington purchase, which Hill and Morgan decline to allow him to do, or to have any representation on the Board of Directors of the Northern Pacific.

(5) During the early part of April, 1901, Hill and Morgan consummate the purchase of the C. B. & Q. Company for the Great Northern and Northern Pacific Railway Companies.

No meeting of either the stockholders or the directors of the Great Northern or Northern Pacific Railway Companies had been held to authorize this.

(6) Later, and during the same month, Harriman and Pearce, acting for the Union Pacific interests, began purchasing Northern Pacific stock, and before May 4th, 1901, acquired considerably more than a majority of the total stock of that Company.

(7) About May 1st, 1901, J. P. Morgan & Co. agree with Mr. Hill to retire the preferred stock of the Northern Pacific Railway Co. and purchase a large block of the common stock and thus take the control from Harriman and Pearce, provided Hill and his associates will co-operate with J. P. Morgan & Co. in controlling the property of the Northern Pacific.

(8) Following this agreement, and between May 4th, and May 8th, 1901, J. P. Morgan & Co. purchase on the stock exchange $15,000,000 par

value of the Northern Pacific common stock, being sufficient to give Morgan and his associates a clear majority of the common stock.

(9) May 9th, 1901, Northern Pacific common stock sold as high as $1,000.00 per share as a result of such purchase and corner in the stock. This was followed by the panic of that day.

(10) On May 11th, 1901, Hill, J. P. Morgan & Co., and Harriman meet and agree that Morgan shall name the next Board of Directors of the Northern Pacific Railway Company, and make public announcement of this fact, in order to allay the panic.

(11) Early in June, 1901, J. P. Morgan & Co. and their associates, and Mr. Hill and his associates agree to form a corporation, which shall take over the stock of the Great Northern and Northern Pacific Railway Companies.

(12) During the same month, W. P. Clough, Vice President of the Great Northern Railway Company and M. D. Grover, its general counsel, began searching in Minnesota for a territorial charter which would be *"beyond legislative amendment."* This search and examination of the laws of Minnesota, as well as New York and New Jersey was continued during the summer of 1901 for the purpose of finding a place where such a corporation could be safely organized.

(13) July 4th, 1901, J. P. Morgan returns from Europe and announces the names of the Board of Directors to be subsequently elected by the Northern Pacific stockholders.

(14) Following this,and during the same month, the Directors of the Northern Pacific Railway Company meet. Five members resign at Morgan's request, and five persons are selected by the Board to fill the vacancies caused by such resignation. Mr. Hill, President of the Great Northern Railway Company is elected at this meeting as one of such directors.

(15) During the early part of July, 1901, J. J. Hill fixes the basis upon which the stockholders of the Great Northern and Northern Pacific Railway Companies shall exchange their stock for that of the Northern Securities Company when it shall be organized. The rates so fixed by Mr. Hill being $180.00 for Northern Securities stock for each $100.00 par value of the Great Northern Railway Company, and $115.00 for Northern Securities stock for each $100.00 par value of the Northern Pacific. At this time Great Northern Railway Company's stock was selling in the market, and continued so to sell during the balance of the year, at from $195.00 to $200.00 per share.

(16) In August, 1901, Hill and his associates decide to amend the By-laws and adjourn the annual meeting of the Northern Pacific Railway Company, if necessary, in order to prevent Harriman

and Pearce who held a clear majority of all of the stock of the Northern Pacific Railway Company, from electing a Board of Directors hostile to the plans of Hill and Morgan for retiring the preferred stock of the Northern Pacific Railway Company, and placing the complete control of that Company with the holding company when organized.

(17) During September, 1901, Morgan and Co. open negotiations with Harriman and Pearce for the purpose of acquiring the latter's stock holdings in the Northern Pacific Railway Company for the Northern Securities Company, when organized.

(18) Early in November, J. P. Morgan & Co. agree with Harriman and Pearce that the Northern Securities Company, when organized, will take over the latters' stock holdings in the Northern Pacific Railway Company and issue $82,492,871 of the Northern Securities Company's stock at par in exchange therefor, and pay a cash bonus of $8,915,629. Harriman testified that he and his associates would not agree to part with their Northern Pacific stock until they saw that the threat of Hill and Morgan, to retire the preferred stock and thus rest control from the Union Pacific interest, was about to and actually would be carried out. See folios 2289 et seq. of the record.

(19) On November 13th, 1901, the Board of Directors of the Northern Pacific Railway Company passed a resolution retiring the preferred stock

of that Company, as J. P. Morgan & Co. had agreed with Mr. Hill, would be done.

(20) On November 13th, 1901, three men selected by Mr. Hill and Mr. Morgan, or their representatives, organize the Northern Securities Company and adopt the charter set forth in appellant's bill.

(21) On November 13th, 1901, these three men meet and pass a resolution authorizing the officers of the Northern Securities Company to take over the Northern Pacific common stock and issue stock of Northern Securities Company therefor on the basis already stated.

(22) On November 14th, 1901, the same three men, acting for the Northern Securities Company, pass a resolution authorizing that Company to take over the stock of the Great Northern Railway Company and issue its stock in exchange therefor on the basis already stated.

(23) On November 14th, 1901, the Board of Directors of the Northern Securities Company is made to consist of fifteen persons,and the three organizers of the Company resign, and some of the real parties in interest are elected in their place.

(24) November 15th, 1901, the Board of Directors of the Northern Securities Company pass the resolution already quoted relative to taking over the holdings of Harriman and Pearce in the Northern Pacific Railway Company.

(25) On November 20th, 1901, the Northern Securities Company had acquired nearly all of the then issued common stock of the Northern Pacific Railway Company and about $41,000,000 par value of the preferred stock.

(26) On November 22nd, 1901, Mr. Hill, as President of the Northern Securities Company issued, and had mailed to the stockholders of the Great Northern Railway Company the letter recommending and suggesting the exchange of the Great Northern stock for stock of the Northern Securities Company. This letter is appellant's Exhibit "10," Fol. 3200 of the record.

(27) On November 25th, 1901, the Great Northern Railway Company amended its by-laws so that all stockholders' meetings would thereafter be held outside the State of Minnesota, and in the City of New York.

(28) On November 30th, 1901, Mr. Hill signed the personal letter or circular to the stockholders of the Great Northern Railway Company, being appellant's Exhibit "11," Fols. 3205 to 3208 of the record.

(29) About December 27th, 1901, the Northern Securities Company had acquired a large majority of the stock of the Great Northern Railway Company.

(30) On January 1st, 1902, the Northern Securities Company exercised its right as a common

stockholder of the Northern Pacific Railway Company to convert the $41,000,000 of preferred stock of that Company, received from Harriman and Pearce, into common stock under the process of retirement; thus giving to the Northern Securities Company about $153,000,000 out of $155,000,000 of the total authorized and issued stock of the Northern Pacific Railway Company.

(31) Early in January, 1902, the purpose and effect of the consolidation of the Great Northern and Northern Pacific Railway Companies in and through the Northern Securities Company is clearly demonstrated; and on January 23rd, 1902, the General Freight Agents of both the Great Northern and Northern Pacific Railway Companies respectively issue a joint circular letter withdrawing all competitive or equalizing rates between every junction point of those two Railway Companies in the State of Minnesota and elsewhere. These letters are appellant's Exhibits "27" and "29," Fols. 3592 and 3598 of the record.

(32) On March 10th, 1902, the Federal Government began its suit against these appellees, and the State of Minnesota, through the Governor and Attorney General, announced that suit was about to be instituted by the State of Minnesota against these appellees.

(33) On March 27th, 1902, the General Freight Agents of the Great Northern and Northern Pacific Railway Companies issued *individual* letters, can-

celling the *circular letters* of January 23rd, 1902, and informed all their agents at junction points that if business presented itself to be handled between junction points of the Great Northern and Northern Pacific Railway Companies, and it became necessary to shrink charges in order to meet competition, that the agents should then take up such matter with the General Freight Agent who would give the agents special instructions relating thereto. See appellant's Exhibit "28," Fol. 2595 of the record.

(34) Immediately after January 1st, 1902, all competition ceased between the Great Northern and Northern Pacific Railway Companies, as shown by the testimony.

From the evidence of Mr. Beck it appears, that the removal of a joint rate between competitive points limited him in shipments to the use of the Great Northern Railway, which delayed delivery of goods two or more days in transit.

From the evidence of Mr. Weld it appears that far better accommodations were furnished students and teachers of the Normal School at Moorhead in traveling over the lines of the Northern Pacific Railway than were furnished subsequent to the practical consolidation of these roads.

From the evidence of Mr. Weideman it appears that adjacent to a competitive point far less facilities for the shipment of grain in the matter of furnishing cars were given him after the organization of the Northern Securities Company than covering

a period of a great many years before. That subsequent to this date his business was unsolicited and accommodations extended before refused.

From the testimony of Mr. Leach it appears that a spur track which for sixteen years had been maintained to a point at the center of his farm was taken up by the Great Northern Railway Company and he was thereafter required to haul his grain to the nearest point of shipment, upon the through line of the Northern Pacific Railway. In this manner after Sept. 12, 1902, Mr. Leach was discommoded in the shipment of his grain raised upon a number of thousand of acres of land by the striking down of competition.

The evidence of all of these witnesses remain entirely unexplained in the record.

VI.

ARGUMENT ON THE LAW.

(1) THE LAWS SOUGHT TO BE ENFORCED BY THE APPELLANT IN THIS ACTION ARE DECLARATORY OF A PUBLIC POLICY OF THE STATE AND REMEDIAL IN THEIR CHARACTER. THEY SHOULD BE LIBERALLY CONSTRUED SO AS TO GIVE FULL FORCE AND EFFECT TO THE INTENTION OF THE LEGISLATURE AND TO ACCOMPLISH THE OBJECTS FOR WHICH THEY WERE PASSED.

This court in the case of *Taylor, et al. v. the United States*, 3 Howard, 210, said:

> "Laws enacted for the prevention of fraud, for the suppression of a public wrong, or to effect a public good, are not, in the strict sense, penal acts, although they may inflict a penalty for violating them. That they should be construed so as most effectually to accomplish the intention of the legislature in passing them."

Speaking through Justice Swayne, in the case of *Cliquot's Champagne*, 3 *Wall.* 114, this court said:

> "Revenue laws are not penal laws in the sense that requires them to be construed with great strictness in favor of the defendant. They are rather to be regarded as remedial in their character, and intended to prevent fraud, suppress public wrong and promote the public good. They should be so construed as to carry out the intention of the legislature in passing them and most effectually accomplish these objects."

So in the case of *United States v. Hartwell*, 6 *Wall.* 385, the Court said:

> "The words must not be narrowed to the exclusion of what the legislature intended to embrace. * * * When the words are general and include various classes of persons, there is no authority which would justify a court in restricting them to one class and excluding others, where the purpose of the statute is alike applicable to all. The proper course in all cases is to adopt that sense of the words which best harmonizes with the context and promotes in the fullest manner the policy and objects of the legislature."

In the case of *United States v. Hodson*, 10 Wall. 395, this Court said:

> "What is implied in a statute is as much a part of it as what is expressed."

See also *Wilson v. National Bank*, 103 U. S. 770.

In *Hawaii v. Mankichi*, 190 U. S. 197, quoting from the syllabus, this Court said:

> "In interpreting a statute the intention of the law-making power will prevail even against the letter of the statute; a thing may be within the letter of the statute and not within its meaning, and within its meaning, though not within its letter."

Noyes on Incorporate Relations, Section 33, sums up the decisions construing statutes of this character in the following language:

> "Constitutional and statutory provisions against the consolidation of competing lines of railroad are *not penal in their nature, but are declaratory of the policy of the state* in favor of the preservation of competition and are entitled to a liberal construction. The purpose

of constitutional conventions in adopting such provisions and of legislatures in enacting such laws was to place an effective bar against any union of railroad companies whereby competition might be removed.

"While, therefore, the term 'consolidation' is generally used to describe a union of corporate properties and stockholders by the process of absorption or fusion, it has a broader meaning as used in constitutional and statutory provisions against the consolidation of competing railroads, and is here used in the sense of 'join' or 'unite.'"

See also, *Hornsby against Eddy, et al.*, 56 Fed. Reporter, 461.

Schus v. Powers-Simpson Co., 85 Minn. 447.

Southerland on Statutory Construction, 218.

With these principles in view, let us turn to the language of the statute. The Act of 1874 provides that "No railroad corporation or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporations with, or lease or purchase the works or franchises of, or *in any way* control any other railroad corporation owning or having under its control a parallel or competing line."

The Act of 1881 provides that "No railroad corporation shall consolidate with, lease or purchase, or *in any way* become the owner or control any other railroad corporation, or stock, franchises, rights or property thereof, which owns or controls a parallel or competing line."

From the language used in the Act of 1881, it would appear that the legislature considered that possibly the Act of 1874 might be limited to the stockholders, lessees, purchasers or managers of any railroad corporation, and thus provided in the later Act that no railroad corporation *itself* should consolidate with another owning or controlling a parallel or competing line.

The omission in the Act of 1881 of the words "lessees, purchasers or managers" is very significant, showing clearly that the legislature considered that the Act of 1874 prohibited the "*lessees, purchasers or managers*" of any railroad corporation from in any way consolidating the stock, property or franchises of such railroad corporation with those of a similar corporation owning or controlling a parallel or competing line.

In construing and enforcing the acts of 1874 and 1881, appellant contends:

FIRST. That the term "*railroad corporation*," used in the acts includes the stockholders of such a corporation and prohibits a consolidation or control by them when acting for themselves, but as such stockholders, as fully as the corporation itself, when they act through and for it.

SECOND. That the term "*purchasers of a railroad corporation*," as used in the act includes and applies to a purchase by acquiring the stock of such corporation and the Northern Securities Company is a purchaser within the meaning of this act.

THIRD. That the term *"Managers of a railroad corporation,"* as used in the act, applies to and includes the stockholders of such corporation.

FIRST.

What is meant by the term *"Railroad corporation?"*

On the threshhold of this question, it is well to bear in mind what a corporation is. The right to be a corporation is a franchise or right conferred by the state, upon certain individuals who have made application to the state for such privilege; and who, when the Articles of Incorporation are adopted and filed in accordance with the laws of the state, become a corporation. These incorporators are not only the stockholders of, but the corporation itself. They become entitled to transact business through the legal fiction or entity represented by the name they have adopted for that purpose. The title to all property taken in the name of this legal entity is held in trust for the stockholders of the corporation. In fact the stockholders are the corporation and the name adopted is a mere legal fiction, through which the law permits them to transact business.

In *Baltimore & Potomac Railroad Company v. Fifth Baptist Church*, 108 U. S., 330, this court said:

> "Private corporations are but associations of individuals united for some common pur-

pose and permitted by the law to use a common name and to change its members without a dissolution of the association."

In *People v. Watertown Assessors*, 1 Hill, 620 the Court said:

> "The shareholders vested with the corporate powers are the body corporate, corporation or company."

Morawetz on Private Corporations, 2nd Edition, Vol. 1, page 2 lays down the conclusion on this subject as follows:

> "It is essential to a clear understanding of many important branches of the law on corporations to bear in mind distinctly that the existence of a corporation, independent of its stockholders is a fiction, and that the rights and duties of an incoporated association, are in reality, the rights and duties of the persons who compose it and not of an imaginary being."

To the same effect, see Taylor on Private Corporations, Section 50.

We do not contend that in considering a corporation in the abstract, it is not a legal entity in the sense that in or with it may rest the title to property; but we do contend that when it comes to motive or action; that alone emanates from the stockholders, who are the vital or acting part of the corporation. They are the *only* vital part of the corporation. Without them the legal entity cannot exist; and when they do not act it lies dormant, inactive.

In the case of *State v. Standard Oil Co.*, 30 N. E. Rep. 279, the Court points this distinction in clear language. The Court said:

> "The claim is based upon the argument that the corporation is a legal entity, separate from its stockholders; that in it is vested all the property and powers of the company, and can only be affected by such acts and agreements as are done or executed on its behalf by its corporate agencies, acting within the legitimate scope of their powers; that its stockholders are not the corporation; that their shares are their individual property, and that they may each and all dispose of and make such agreements affecting their shares as best suit their private interests; and that no such acts and agreements of stockholders, subservient of their private interests, can be ascribed to the company as a separate entity, though done and concurred in by each and all of its stockholders. The general proposition that a corporation is to be regarded as a legal entity, existing separate and apart from the natural persons composing it, is not disputed; but that the statement is a mere fiction, existing only an idea, is well understood, and not controverted by any one who pretends to accurate knowledge on the subject. It has been introduced for the convenience of the company in making contracts, in acquiring property for corporate purposes, in suing and being sued, and to preserve the limited liability of the stockholders by distinguishing between the corporate debts and property of the company and of the stockholders in their capacity as individuals. All fictions of law have been introduced for the purpose of convenience, and to subserve the ends of justice. It is in this sense that the maxim *in fictione juris subsistit aequitas* is used and the doctrine of fictions applied. But when they are urged to an intent and purpose not within the reason and policy

of the fiction, they have always been disregarded by the courts. Broom Leg. Max. 130. 'It is a certain rule,' says Lord Mansfield, C. J., 'that a fiction of law shall never be contradicted so as to defeat the end for which it was invented, but for every other purpose it may be contradicted.' Johnson v. Smith, 2 Burrows, 962.

"No reason is perceived why the principles applicable to fictions in general should not apply to the fiction 'that a corporation is a personal entity, separate from the mutual persons who compose it, and for whose benefit it has been invented.' One author seems to think that it has outlived its usefulness; that it is 'a stumbling block in the advance of corporation law towards the discrimination of the real rights of men and women,' and should be abandoned. Tayl. Corp. § 51. Among the many attempts that have been made to define the nature of a corporation, that given by Mr. Kyd, discarding, or at least not adopting, the metaphysical distinction of a legal entity separate from the persons comprising it, is certainly the most practical, presenting, as it does, the real nature of a corporation as seen in its constituents, and in the manner that it is formed and transacts its business. His definition is: 'A collection of many individuals united into one body, under a special denomination, having perpetual succession under the artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations, and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights more or less extensive according to the design of its institution or the powers conferred upon it, either at the time of its creation or any subsequent period of its existence.' 1 Kyd, Corp. 13. In brief, then, a corporation is a collection of

many individuals, united in one body under a special denomination, and vested by the policy of the law with the capacity of acting in several respects as an individual. 'The statement,' says Mr. Morawetz, 'that a corporation is an artificial person or entity, apart from its members, is merely a description, in figurative language, of a corporation viewed as a collective body. A corporation is really an association of persons, and no judicial *dictum* or legislative enactment can alter this fact.' See his work on Corporations, § 227. So that the idea that a corporation may be a separate entity, in the sense that it can act independently of the natural persons composing it, or abstain from acting, has no foundation in reason or authority, is contrary to the fact, and to base an argument upon it, when the question is as to whether a certain act was the act of the corporation or of its stockholders, can not be decisive of the question, and is therefore illogical; for it may as likely lead to a false as to a true result."

In *People v. North River Sugar Refining Company*, 24 N. E. Rep. 834, the Court of Appeals of New York said:

"The abstract idea of a corporation, the legal entity, the impalpable and intangible creation of human thought, is itself a fiction, and has been appropriately described as a figure of speech. It serves very well to designate in our minds the collective action and agency of many individuals as permitted by the law; and the substantial inquiry always is what, in a given case, has been that collective action and agency. As between the corporation and those with whom it deals, the manner of its exercise usually is material, but, as between it and the state, the substantial inquiry is only what that collective action and agency has done; what it has in fact accomplished; what is seen to be its

effective work; what has been its conduct. It ought not to be otherwise. The state gave the franchise, the charter, not to the impalpable intangible, and almost nebulous fiction of our thought, but to the corporators, the individuals, the acting and living men, to be used by them, to rebound to their benefit, to strengthen their hands, and add energy to their capital. If it is taken away, it is taken from them as individuals and corporators, and the legal fiction disappears. The benefit is theirs, the punishment is theirs, and both must attend and depend upon their conduct; and when they all act, collectively, as an aggregate body, without the least exception, and so acting reach results and accomplish purposes clearly corporate in their character, and affecting the vitality, the independence, the utility, of the corporation itself, we cannot hesitate to conclude that there has been corporate conduct which the state may review, and not be defeated by the assumed innocence of a convenient fiction."

In the case of *Ford v. C. M. S. Association*, 39 N. E. 655, the Supreme Court of Illinois said:

"It is urged that the corporation cannot alone enter into a trust or combination that could be a violation of this statute. While it is true, as a general proposition, that a corporation may be created and constituted a legal entity, existing separate and apart from the natural persons composing it, yet it cannot act independently, or against the will, or abstain from complying with the direction, of the natural persons who constitute the corporate body. A corporation is in fact an association of persons united in one body, having perpetual succession, vested with political rights conferred upon it by the authority creating it."

In the light of these decisions, let us study the language of this act. It provides:

> "No *railroad corporation* shall consolidate the stock of such corporation with, or *in any way control* any other corporation, etc."

How can a railroad corporation consolidate the stock issued by it with any other corporation? It does not own the stock after it is issued, and before issuance, it cannot act, for, without stockholders it is dormant. The stock after issuance belongs to the stockholders, they alone acting for themselves, but as such stockholders, or through the corporation itself, can perfect such consolidation. Clearly the legislature intended to prohibit a consolidation by reason of stock ownership, or any other form of control. The act of 1881, in contradistinction, prohibits any railroad corporation *itself* from consolidating with, leasing, purchasing, or in any way becoming the owner of any other railroad corporation, or the stock, franchises, rights or properties thereof. Does not this later act clearly show that the legislature understood that the term *"railroad corporation"* in the act of 1874 included and referred to the stockholders of such corporation as well.

Laws of this character would be of little force, if all or a majority in interest of the stockholders of a railroad corporation, acting individually, but by virtue of their stock holdings, can do that which the legal fiction or name they have adopted, and which in itself is dormant without their action, cannot do.

The testimony in this case shows that the promoters of the Northern Securities Company intended to avail themselves of the legal fiction, that a corporation is an entity, separate and distinct from its stockholders, so as to evade the laws of the state of Minnesota sought to be enforced in this action.

Testifying on this subject, Mr. Clough said:

> "Speaking for myself, I never had the slightest doubt of the right of a corporation, even under the laws of the State of Minnesota or the laws of New Jersey, or of any other state, that was not a *railroad corporation*, to acquire, hold and own the stocks of the Northern Pacific and Great Northern Railway Companies."

On this same subject, Mr. Stetson, General Counsel for J. P. Morgan & Co., testified as follows:

> "Q. You knew at that time that there was litigation years before with reference to the consolidation of the stock of the Northern Pacific and the Great Northern Railway Companies?
>
> A. Oh, I am very familiar with that. That Pearsall suit was brought in consequence of my objections at the time.
>
> Q. And naturally the questions to which I attract your attention would be one of the primary matters which you would consider, isn't that true?
>
> A. Yes, if it hadn't been so largely laid at rest by the decision in the Pearsall case which I thought authorized any private person to own the stock of those roads.
>
> Q. But the Northern Securities Company was not a private person?
>
> A. I considered it so, in that sense. I don't know what other people thought; I know what I thought.
>
> Q. Of course I am not asking you what you thought; that would be privileged.

A. Well, I am perfectly willing that any one should have my opinion as to the matter.

Q. Then, I infer from your statement, Mr Stetson, that you evidently proceeded in the organization of the Northern Securities Company upon the theory that the case to which you refer authorized or permitted the action to which your attention has been called, that is, this class of organizations, as well as taking on of the stock of the Northern Pacific and the Great Northern.

A. I don't say it authorized or permitted it; I say I think it recognized it."

(See Fols. 2672 to 2674 of the record).

With this declaration on the part of the promoters of this scheme to evade the laws of the State of Minnesota, a court of equity should not permit them to avail themselves of a legal fiction for that purpose.

As said by the court in *Wood v. Ferguson*, 7 Ohio St. 288:

> "The doctrine itself is but a legal fiction, and like other legal fictions, was invented to enable courts to arrive at conclusions which would do justice, and at the same time preserve the semblance of logical consistency. They were invented for the advancement of justice and will be applied for no other purpose. * * * * *We know of no exceptions to the rule that where a legal fiction would work injustice, courts will refuse to recognize it.*"

The English authorities all announce the principle "that a fiction of law shall never be construed so as to defeat the ends for which it was invented, and when urged for an intent and purpose not within the reason and policy of the fiction, the courts will not recognize or accord any rights under it."

In the case of *State v. Standard Oil Company, supra*, it is held:

> "All fictions of law have been introduced for the purpose of convenience and to subserve the ends of justice. It is in this sense that the maxim *in fictione juris subsistit aequitas* is used and the doctrine of fictions applied. But when they are urged to an intent and purpose not within the reason and policy of the fiction, they have always been disregarded by the courts."

We know of no case where a court has allowed parties to avail themselves of a legal fiction to do a manifest wrong, or to evade the declared public policy and purpose of a sovereign state.

In view of these principles, the appellant asserts that the acts of the owners of a majority or controlling interest of the stock of the Great Northern and Northern Pacific Railway Companies in forming the Northern Securities Company for the declared purpose of controlling and managing the Great Northern and Northern Pacific Companies, and after its formation turning over to it the stock of those railway companies so held by them, is a consolidation of these two railway companies prohibited by the words "*no railroad corporation* shall consolidate the stock, property or franchises of such corporation with, or in any way, control any other railroad or corporation owning or having under its control a parallel or competing line."

The phraseology of the statute shows that the legislature intended not only to prohibit a consol-

idation, but any method of control. It says: "Shall not consolidate or *in any way* control."

It hardly seems necessary to urge that placing the ownership of a majority of the stock of these two railway companies in a single corporation constitutes a unity of control of these corporations, especially when the incorporators themselves say that is their intention.

This court said in the case of *Pearsall v. The Great Northern Railway Company*, 161 U. S. 671:

> "With half of its capital stock already in its hands, the purchase of enough to make a majority would follow almost as a matter of course and the mastership of the Northern Pacific would be assured."

In discussing this subject in a case where the facts in some respects are similar to this case the Supreme Court of Pennsylvania in *Penn. Ry. v. Commonwealth*, 7 Atl. Rep. 371, said:

> "In view of this plain and candid statement of the real facts of the case by the parties themselves, it is impossible, as we have already said, to draw any other inference than that the real party contracting and stipulating for the control of the South Pennsylvania Railroad Company was the Pennsylvania Railroad Company, and that any title to any stock or securities intended to be held in the name of the Pennsylvania Company was to be a mere naked legal title, to be held in trust. In other words, that the Pennsylvania Railroad Company intended to do in fact what it feared it was forbidden by law to do, and therefore attempted to give the transaction the appearance, in the eye of the law of being other than it really was. This, of course, cannot avail in

a court of equity, which looks at substance, without being controlled by form.

It is further strenuously urged, on behalf of defendants, that even if the Pennsylvania Railroad Company be the real party to the contract, it has not done or stipulated for anything prohibited by the constitution, for the reason that the purchase of the stock of a 'parallel or competing line' is not among the things prohibited; and the case of *Pullman Palace Car Co. v. Missouri Pac. R. Co.*, 6 Sup. Ct. Rep. 194, (recently decided by the supreme court of the United States.) is cited to sustain the proposition that the ownership of the stock of a corporation does not give control of the corporation. We have carefully considered the opinion delivered in that case, which, although not of binding authority upon the state courts, because not deciding a federal question, is yet, in view of its source, entitled to the highest respect. But we do not think it sustains the position contended for. The decision of the question of control was not called for in the case, which was already decided on another and a fundamental point. But waiving this, the point decided is merely that the ownership of the stock does not necessarily give control of the road. The chief justice says, speaking of the stockholding company: 'Practically it may control the company, but the company alone controls its road.' 6 Sup. Ct. Rep. 199. This decision seems very narrow, but it is certainly involved in the conclusion reached, which cannot stand unless it is recognized; for it is too plain to bear argument that the ownership of the stock of a corporation carries with it the control of the corporation. Indeed, this is merely a different way of stating the truism that a corporation is controlled by its stockholders. That they do it through the agency of a board of directors and other officers does not alter the fact."

In the case of *People v. Chicago Gas Trust Co.*, 22 N. E. 798, the Court said:

> "Of what avail is it that any number of gas companies may be formed under the general incorporation law, if a giant trust company can be clothed with the power of buying up and holding the stock and property of such companies, and, through the control thereby attained, can direct all their operations, and weld them into one huge combination? * * * It cannot be denied that the appellee, as owner of a majority of the shares of stock of these four companies can control them in the exercise of all their corporate powers through a board of managers of its own selection."

In *Weidenger v. Spruance*, 101 Ill. 278, the Court, through Mr. Justice Schofield said:

> "The stockholders elect the directors, and, through them, carry into effect the corporate functions. Presumably, the directors act in obedience to the aggregate wishes of the stockholders."

In the case of *Farmers Loan & Trust Co. v. N. Y. & N. Ry. Co.*, 44 N. E. 1046, the Court said:

> "The appellants contend that the New York Central & Hudson River Railroad Company, as such majority stockholder, also acquired the entire control of the affairs of the New York & Northern Railway Company through its board of directors, who were willing to serve the interests of those owning a majority of the stock, as was indicated by the resignation of three of the directors, the appointment of others in their places, by the resignation of two officers who occupied important positions in the affairs of that company, and by the appointment of two officers in their places who were in the employ of the New York Central

& Hudson River Railroad Company. While the proof upon that question was not, perhaps, conclusive, yet the circumstances developed by the evidence plainly indicate that, after it became the owner of a majority of the stock and bonds, the New York Central & Hudson River Railroad Company dictated and governed the action of the board of directors, and controlled the management of the affairs of the New York & Northern Railway Company.

The facts already referred to are strong proof that the New York Central & Hudson River Railroad Company was in the control of the affairs of the New York & Northern Railway Company. It is hardly to be supposed that a board of directors which was not under the control of another corporation would appoint three of the friends of the president of that corporation as directors of the company, and place the officers of that company in control of its financial affairs, especially when it was the owner of competing lines of railroad. The clear and legitimate inference to be drawn from the circumstances proved in this case is that after the New York Central & Hudson River Railroad Company purchased a majority of the stock and bonds of the New York & Northern Railway Company, it controlled its officers and directors as fully and completely as though they had been elected by its votes. All the facts and circumstances, so far as the defendants were permitted to prove them, tend to show that such was the situation. Indeed, it is a matter of common knowledge that, where the ownership of a majority of the stock of such a corporation changes, the board usually changes, unless its members are already in harmony with the policy of the purchasers."

It is difficult to see how any one can contend that ownership of a majority of the capital stock of a corporation does not vest in such owners the com-

plete management and control of such corporation. The owners of such stock elects its board of directors, who, presumably will carry out the purpose and intent of the owners of a majority of the stock.

That this was the declared intention of the incorporators of the Northern Securities Company, is clearly shown by the testimony of the witnesses Baker, James, Thorne, Kennedy, Morgan and Hill, already quoted. These men, with other stockholders now constitute the Northern Securities Company, and we have a right to take their conclusions on their own acts in determining the results actually accomplished.

The acquisition of a majority of the capital stock of the Great Northern and Northern Pacific Railway Companies by the Northern Securities Company effects as complete a consolidation of the property and franchises of such corporations as though one had purchased all the property and franchises of the other.

In the absence of the testimony of Baker, Thorne, and James, which was not taken in the Federal case, but appears in the record in this case, and has already been quoted, the four Circuit Court Judges, in considering this branch of the case in *United States v. Northern Securities Company*, et al., 120 Federal Reporter, page 721, said:

> "It will not do to say that, so long as each railroad company has its own board of directors, they operate independently, and are not controlled by the owner of the majority of their stock. It is the common experience of mankind that the acts of corporations are dictated

and that their policy is controlled by those who own the majority of their stock. Indeed, one of the favorite methods in these days, and about the only method, of obtaining control of a corporation, is to purchase the greater part of its stock. It was the method pursued by the Northern Pacific and Great Northern Companies to obtain control of the Chicago, Burlington & Quincy Railroad; and, so long as directors are chosen by stockholders, the latter will necessarily dominate the former, and in a real sense determine all important corporate acts.

"The fact that the ownership of a majority of the capital stock of a corporation gives one the mastery and control of the corporation was distinctly recognized and declared in Pearsall v. Great Northern Railway, 161 U. S. 646, 671, 16 Sup. Ct. 705, 710, 40 L. Ed. 838. The same fact has been recognized and declared by other courts. Pennsylvania R. Co. v. Commonwealth (Pa.) 7 Atl. 368, 371; Farmers' Loan & Trust Co. v. New York & Northern Railway Co., 150 N. Y. 410, 425, 44 N. E. 1043, 34 L. R. A. 76; People ex rel v. Chicago Gas Trust Co., 130 Ill. 268, 22 N. E. 798, 802, 8 L. R. A. 497, 17 Am. St. Rep. 319. In opposition to this view counsel cite Pullman Car Co. v. Missouri Pacific Co., 115 U. S. 587, 596, 6 Sup. Ct. 194, 29 L. Ed. 499, but in that case the meaning of the word 'controlled' as used in a private contract, was the point under consideration, and what was said on the subject cannot be held applicable to cases arising under the anti-trust act, when the point involved is whether the ownership of all of the stock of the two competing and parallel railroads vests the owner thereof with the power to suppress competition between such roads. We entertain no doubt that it does. Indeed, we regard the suppression of competition, and to that extent a restraint of commerce, as the natural and inevitable result of such ownership.

> "What has been done through the organization of the Securities Company accomplishes the object which Congress has denounced as illegal more effectually, perhaps, than such a combination as is last supposed. That is to say, by what has been done the power has been acquired (and provision made for maintaining it) to suppress competition between two interstate carriers who own and operate competing and parallel lines of railroad. Competition, we think, would not be more effectually restrained than it now is under and by force of the existing arrangement if the two railroad companies were consolidated under a single charter."

It cannot, and will not, be denied that competition between parallel and competing lines is the declared public policy of this State. Such public policy may be declared by statute, by the decisions of the courts of the State, or by the acts of the public officials of the State.

Regarding the method of ascertaining what is the public policy of a State, the Supreme Court of Illinois, in the case of *Harding v. Glucose Co.*, 55 N. E. 599, said:

> "The public policy of a state is to be found in its statutes, and, when they have not directly spoken, then in the decisions of the courts, and in the constant practice of government officials. When the legislature speaks upon a subject upon which it has the constitutional power to legislate, public policy is what the statute passed by it indicates."

See, also, *United States v. Trans-Missouri Freight Ass'n.*, 166 U. S. 290.

In addition to the legislative enactments on this subject, the Supreme Court of the State of Minne-

sota, in the case of *Stewart v. Transportation Co.*, 17 Minn., 372, has decided:

> "It is against the general policy of the law of this State to destroy or interfere with free competition."

SECOND.

The term "*purchaser of a railroad corporation*," as used in the act of 1874, includes a purchase by acquiring the stock of such corporation, and the Northern Securities Company is a purchaser within the meaning of this act.

A railroad corporation is purchased by the acquisition of a majority or all of the stock of such railroad corporation. This is the general meaning of the term "*to purchase a railroad corporation*," as used by Mr. Morgan and Mr. Hill in this case, when they both testify that they *purchased* the C. B. & Q. Railroad Company. They purchased about 95% of the capital stock of that company from the stockholders of that corporation, and thus "*purchased*" the railroad, as they say. This is equally true of many of the subsidiary lines now owned by both the Great Northern and Northern Pacific Railway Companies, as shown by the record. Either the Great Northern or Northern Pacific Railway Companies have "*purchased*" a majority or all of the capital stock of such subsidiary companies. No other transfer of ownership or muniment of title was ever given or taken in the purchase of the Burlington road, or any of the other companies last above referred to, other than a transfer of the capi-

tal stock of such railroad corporations so purchased.

This term has been used and recognized in the business world for many years. One often hears the statement made that such and such a railroad corporation has been "*purchased*" in the open market by a purchase of a majority of the issued capital stock of such railroad corporation. This was the method by which Harriman and Pearce sought to "*purchase*" the Northern Pacific in opposition to Mr. Morgan and Mr. Hill, as stated by them.

The courts have also recognized the acquisition of a majority of the capital stock of a railroad corporation as a purchase of such railroad corporation, and the person who takes such stock, as the "*purchaser*" of such a railroad corporation.

In the case of *Williamson v. N. J. S. R. R. Co.*, 26 N. J. Eq. Reports, page 398, in deciding whether or not railroad corporations had been consolidated as authorized by law, the Court said:

> "For the purpose of acquiring them, and as the means of consolidating the road and property of the latter company with others, they purchased capital stock of that company to the extent of sixteen-seventeenths of the whole amount. * * * The purchase and sale and delivery of the stock (sixteen-seventeenths of the whole), by virtue of the legislative authority referred to, for the purpose of consolidation, and the consequent, actual, practical and absolute consolidation completely recognized in all things will be held in equity to be a consolidation in accordance with the provisions of the act."

In the case of *Hill, et al. v. Nisbitt, et al.*, 100 Ind. Reports, page 341, in construing an act of the legislature authorizing a consolidation of railway corporations in that State, the Court said:

> "Section 3951, R. S. 1881, authorizes any railroad corporation organized under the provisions of the general railroad law, 'to acquire, by purchase or contract, the road, road-bed, real and personal property, rights and franchises of any other railroad corporation or corporations which may cross or intersect' its line; and if in any case it should appear to be a necessary or reasonable means to that end, no reason is perceived why it might not be *accomplished by purchasing the stock, instead of purchasing the corporate property directly.* In short, the purchase of stock by one railroad corporation in another will be upheld whenever it is a necessary or reasonable means to the accomplishment of an end proposed, which is within the scope of its statutory powers.
>
> "Keeping in view the averments in the complaint, from which the purpose for which the stock was purchased may be fairly inferred and considering the broad and comprehensive powers, conferred by the statutes on railroad corporations, authorizing them to acquire real and personal property 'necessary to accomplish the objects for which the corporation is created,' and to acquire the property of and consolidate with uncompleted connecting and intersecting lines, and we cannot say that the purchase of the stock was unauthorized. R. S. 1881, Sections 3903. 3951."

See, also, *Todd, et al. v. Kentucky Union Land Company, et al.*, 57 Federal Reporter, page 47.

Marbury v. Kentucky Union Land Company, 62 Federal Reporter, page 335.

In the case of *Kohl, et al. v. United States*, 91 U. S., page 367, quoting from page 374, this Court said, in defining the meaning of the word *"purchase:"*

> *"Purchase* includes all modes of acquisition other than that of descent."

CHAPTER TWO HUNDRED AND TWENTY-EIGHT OF THE LAWS OF APPELLANT FOR THE YEAR 1889 AND AS CODIFIED IN PARAGRAPHS 2715 TO 2717 COMPILATION OF THE STATUTES OF MINNESOTA 1894, VERY CLEARLY SHOWS THAT THE LEGISLATURE INTENDED TO PROHIBIT THE CONSOLIDATION OR CONTROL OF PARALLEL AND COMPETING LINES OF RAILWAY BY STOCK PURCHASE OR OWNERSHIP.

The acts in question, prohibiting such consolidation, also *authorize* the consolidation of connecting lines by purchase of stock, stock ownership or control, for the purpose of forming a continuous and connecting line. The acts provide as follows:

> "Any railway company of this state, empowered by the laws thereof to *consolidate* its railway property and franchises, or any portion thereof, of another railway company, or to purchase the railway property and franchises, or any part thereof, of another railway company, *may effect such consolidation or purchase by acquiring the stock*, bonds or other securities of such other railway company; and for the special purpose of acquiring the same, may create, issue or dispose of its own stock, bonds or other securities, in addition to the amounts of the same it is otherwise empowered to issue, to an amount not exceeding the actual value of the stock or bonds of such other company acquired by it."

(See paragraphs 2715-16-17, Vol. 1 of the Statutes of this State, compilation of 1894).

These provisions authorizing consolidation or control by purchase of stock are a part of the same acts prohibiting such a consolidation when parallel and competing lines are involved. Thus clearly showing that it was the purpose and intent of the legislature to prohibit any consolidation or control of competing lines of railway in the manner attempted through the Northern Securities Company.

This legislative construction of the laws themselves, by the body enacting them, should be given great weight by the Court in the determination of this question.

The right to own a railroad corporation or the ownership of a railroad corporation, which is the result of a purchase, is a right belonging to and vested in the stockholders of such railroad corporation. This is a franchise or right separate and distinct from the legal entity or fiction represented by the name of the corporation, and in which the title to the property controlled or managed through the corporation, is vested, in trust for its stockholders.

The Supreme Court of the United States in *Memphis Railroad Co. v. Commissioners*, 112 U. S. 619, said:

> "The franchise of being a corporation need not be implied as necessary to secure to the mortgage bondholders, or the purchasers at a

foreclosure sale, the substantial rights intended to be secured. They acquire the ownership of the railroad, and the property incident to it, and the franchise of maintaining and operating it as such; and the corporate existence is not essential to its use and enjoyment. All the franchises necessary or important to the beneficial use of the railroad could as well be exercised by natural persons. The essential properties of corporate existence are quite distinct from the franchises of the corporation. The franchise of being a corporation belongs to the corporators."

In the case of *Fietsan v. Hay*, 13 N. E. Rep. 501, the Court said:

"Such a corporation has been well defined to be an 'artificial being; created by law and composed of individuals, who subsist as a body politic under a special denomination, with the capacity of perpetual succession, and of acting within the scope of its charter' as a natural person. Now, a franchise is nothing more than the right or privilege of being a corporation, and of doing such things, and such things only, as are authorized by the corporation's charter. This right of a body of men to be and act as an artificial person, without, as a general rule, incurring individual responsibilities, is declared by Blackstone to be 'a royal privilege or branch of the king's prerogative subsisting in the hands of a subject.' 2nd Bl. Comm. Such right or franchise is defined by Bouvier to be 'a certain privilege conferred by Grant from Government and invested in individuals.' Now, it is clear from these definitions, and from the very nature of the corporation, that a franchise, or the right to be and act as an artificial body, vests in the individuals who compose the corporation, and not in the corporation itself."

Noyes on Intercorporate Relations, paragraph 131, summarizes this principle as follows:

> "The franchise to be a corporation belongs to the stockholders and not to the corporation. The grantees of the charter are, primarily, the corporators, and the franchise is vested in them, their associates and successors. The corporation when formed may itself take, under the charter, special rights and privileges—also termed franchises—necessary to carry into effect the objects for which it was formed, but the franchise to be a corporation remains in the stockholders. 'A corporation is itself a franchise belonging to the members of the corporation; and a corporation being itself a franchise may hold other franchises as rights and franchises of the corporation.' * * *
>
> "As the franchise of corporate existence belongs to the stockholders of a corporation, they may, practically, transfer it by the sale of their shares of stock; and, in a sense, the sale of a single share amounts *pro tanto* to a transfer of an interest in this primary franchise. The purchasers, however, merely become stockholders in the same corporation in place of the vendors—the corporate identity remains unchanged."

The right to be a corporation is the right or power conferred upon the stockholders by the state to direct the management and control of the property, the title to which is vested in the legal entity represented by the name of the corporation. This right always rests with the stockholders so long as the title to the property remains in the name of the corporation. It is the right to manage and control the property of a railroad corporation standing in its name, which the purchasers of a railroad corporation acquire. That is, where the stockhold-

ers of a railroad corporation sell their capital stock to a new set of individuals, they have, so far as they are concerned, sold the corporation and conferred upon their successors in stock ownership the right to manage and control the property of the railroad corporation. It is this right which the purchasers of a railroad corporation acquire when they purchase its stock, and it is this right which the Northern Securities Company acquired when it acquired a majority of the capital stock of the Great Northern and Northern Pacific Railway Companies; and it is the consolidation of this right in one corporation or one purchaser of all, or substantially all, of the capital stock of the Great Northern and Northern Pacific Railway Companies, which the statute prohibits when it says, "no purchaser of a railroad corporation shall consolidate the stock, property or franchise of such corporation with, or in any way control any other railroad corporation owning a parallel or competing line."

THIRD.

This same argument is equally true as applied to the "*managers*" of a railroad corporation. The court will notice that there are four distinct entities, persons, or combination of persons prohibited from consolidating parallel and competing lines of railway, or in any way controlling the same.

First. No railroad corporation can do it.

Second. No lessees of a railroad corporation can do it.

Third. No purchasers of a railroad corporation can do it.

Fourth. No managers of a railroad corporation can do it.

In considering this question, the purpose and intention of the organizers of the Northern Securities Company, who were the controlling stockholders of the Great Northern and Northern Pacific Railway Companies should have a marked bearing upon the question. As already shown, it was the declared purpose and intention of the promoters and organizers of the Northern Securities Company, and those same persons afterward became its directors and officers, to consolidate and control these two Railway Companies in such a way that neither would do, or permit anything to be done, which would be injurious to the property or business, or in any way interfere with the other.

VII.

IT WAS URGED BY COUNSEL FOR APPELLEES IN THE COURT BELOW, AND THE COURT DECIDED THAT CERTAIN LANGUAGE USED BY THIS COURT IN THE CASE OF *Pearsall v. The Great Northern Railway Company*, 161 U. S. page 646, SANCTIONED THE ACQUISITION OF ALL THE STOCK OF THESE TWO RAILWAY CORPORATIONS BY A HOLDING COMPANY ORGANIZED EXPRESSLY FOR THE PURPOSE OF CONSOLIDATING THEM, AND STIFLING ALL COMPETITION BETWEEN THEM; AND THAT IN SUCH A CASE, THE STATE IS POWERLESS TO ENFORCE ITS LAWS AGAINST SUCH A CONSOLIDATION.

The exact language used in the Pearsall case, from which this startling conclusion is drawn is as follows:

> "Doubtless these stockholders could lawfully acquire by individual purchases a majority, or even the whole of the stock of the reorganized company, and thus possibly obtain its ultimate control; but the companies would still remain separate corporations with no interests, as such, in common. This, though possible, would not be altogether feasible, and would require considerable time for its accomplishment. In a few years the two companies might by sales of the stock, so acquired, become completely dissevered, and the interests of the stockholders of each company thus become antagonistic. Under the proposed arrangement, however, the Northern Pcific as a company, in return for a guaranty, which the individual stockholders could not give, turns over to a trustee for the entire body of stockholders of the Great Northern one-half of its stock, with the almost cer-

> tainty of the latter securing the complete control, and probably the ultimate amalgamation, of the two companies. If such amalgamation were once affected, it would in all probability be final."

At the outset, we must bear in mind that this is a mere dictum of the court, and the question referred to in the language used was not before the court; it was not urged on the one side nor contested on the other; and the court was not called upon to decide that question. The laws of this state as applied to such a condition were not before the court, nor were the legal objections to any such plan or scheme presented to the court. Under such circumstances, this language is not decisive.

Regarding such expressions in an opinion of the Court, Chief Justice Marshall in *Cohens v. Virginia*, 6 Wheaton, page 398, said:

> "The counsel for the defendant in error urge, in opposition to this rule of construction, some *dicta* of the court, in the case of Marbury v. Madison. It is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all othe reases is seldom completely investigated."

See also, *United States v. Wong Kim Ark*, 169 U. S., page 679, where the court re-announces this principle.

The case here presented is not at all similar to the one supposed or suggested by the court in the Pearsall case in the language above quoted.

As stated by the Court the plan or scheme of consolidation then before the Court would, in all probability be perpetual or final; so would the plan or scheme adopted by the incorporators of the Northern Securities Company and finally consummated in that company be equally final and perpetual.

In this case we have a corporation immortal in existence, boundless in power, which is centralized in two or more men, which has acquired nearly all of the stock of these two railway companies for the express purpose of unifying, managing and controlling these two corporations, and to destroy all competition between them. In other words, to as fully and completely do that which the statute prohibits as it is possible to do. This, surely, is not sanctioned by the language above quoted in the Pearsall case. It cannot be assumed for one moment that had this question in this form been before the Supreme Court in the Pearsall case, that court would have approved it; because this scheme is as clearly a violation of the laws of this state as the one then before the court. In the Pearsall case, the Supreme Court emphatically denounced a consolidation of these railway companies; and yet counsel seek to use certain language of the court in

that case, as an approval of a consolidation through a device, infinitely more detrimental to the public welfare of the state and dangerous to its citizens, both present and future, than the one declared by the court to be unlawful. Once the seal of judicial approval is placed on the ownership of the stocks of the Great Northern and Northern Pacific Railway Companies by the Northern Securities Company, all hope of possible separation of those companies or benefits of competition, is dead; and the absolute control over them is forever placed with a single individual. Surely the Supreme Court did not intend their judgment of disapproval to be distorted into an approval of such a plan, because the court said:

> "There are, moreover, thought to be other dangers to the moral sense of the community incident to such great aggregations of wealth, which though indirect are even more insidious in their influence, and such as have awakened feelings of hostility, which have not failed to find expression in legislative acts."

How far reaching and destructive this danger will become, not only to the moral sense, but to the material welfare of the community, when such a scheme as that planned and consummated by the incorporators of the Northern Securities Company, has received judicial approval, and through it or some other, all railroads in this state are controlled by a single corporation. The possible—nay, probable results are appalling. That "community of interest" so graphically defined by Mr. Morgan when

he said "*we will own them all*," will then be consummated.

There is a vast difference between a purchase by individuals as suggested by this Court in the Pearsall case, and the acquisition of stocks of different corporations by a holding company, such as the Northern Securities Company. In considering this phase of the question, the Court in *People v. North River Sugar Refining Company*, 24 N. E. Rep. 834, quoting from page 840, said:

> "It is not a sufficient answer to say that similar results may be lawfully accomplished; that an individual having the necessary wealth might have bought all these refineries, manned them with his own chosen agents, and managed them as a group, at his sovereign will; for it is one thing for the state to respect the rights of ownership and protect them out of regard to the business freedom of the citizen, and quite another thing to add to that possibility a further extension of those consequences by creating artificial persons to aid in producing such aggregations. The individuals are few who hold in possession such enormous wealth, and fewer still who peril it all in a manufacturing enterprise; but if corporations can combine, and mass their fortunes in a solid trust or partnership, with little added risk to the capital already embarked, without limit to the magnitude of the aggregation, a tempting and easy road is opened to enormous combinations vastly exceeding in number and in strength and in their power over industry any possibilities of individual ownership."

See also *Stockton v. Central Railway Company of New Jersey*, 24 Atl. Rep. 964.

Now, let us take our bearings on this question, first from the language of the acts themselves. As already pointed out, two things are expressly prohibited by these laws, to-wit:

(a) Any form of consolidation.

(b) Any form of control.

These two prohibitions rest upon any railroad corporation, any purchaser of a railroad corporation, any lessee of a railroad corporation or any manager of a railroad corporation, which corporation owns or controls a parallel or competing line. We fail to see how language broader than this could possibly be used. This language certainly disclosed the intention on the part of the legislature, to prohibit any form of consolidation, or any form of control, which might result in removing competition between parallel and competing lines of railway. The sole thing sought to be preserved to the citizens of this state through this declaration of public policy on its part is competition between competing lines of railway; and any act or combination which removes or destroys such competition is in violation both of the spirit and letter of these laws. As already shown, these acts are declaratory of a public policy, and must be liberally construed so as to give full force and effect to both the intent and purpose of the legislature.

The legislature aimed at practical results. Its clear intent and purpose was to preserve competition between parallel and competing lines of railway in this state. In order to preserve this it has declared that no consolidation shall take place, or

control be obtained, in any form, by or for a railway company, over that of another owning a parallel or competing line, either by consolidation of properties or control through stock ownership.

In the case of *State v. Atchison & N. R. Ry. Co.*, 38 N. W. Rep. 51, the Court in discussing the constitutional provision prohibiting the consolidation of parallel and competing lines said:

> "The constitutional convention aimed at practical results. The character of the title of the parties operating a railway is of but little moment to the general public, while the requirements that different roads shall continue to be competing lines as when they are construed is of the utmost importance to all. The law cannot be evaded, therefore, by substituting a lease for a deed of conveyance. * * * It was clearly within the inhibition of the constitution, and neither its stocks, franchises, or earnings can be joined to any other competing line. The prohibition against the joinder of these prohibits the leasing of such roads. Competition can only be had by securing competing lines, and thus prevent a monopoly in the operation of the roads, and this it did by forbidding the purchase or control of parallel or competing roads under the same management."

In *East St. Louis Connecting Ry. Co. v. Jarvis*, 92 Fed., page 742, the Court said:

> "It is true that with respect to certain local industries, they were not competing, because both had not access to them; but the principal business designed was the transfer of through traffic to the city of St. Louis, and the only company, in connection with the ferry companies with which it connected, was the competitor of the other. We think this plain upon its face, and that no elaboration could

strengthen the statement. The evidence of the case also clearly demonstrates the fact. It appears that in the year 1884 these two companies were cutting rates, buying business, and losing money, and upon the advice of a mutual friend, not then connected with either company or with either of the ferry companies, the two companies concluded to put the two properties under the same management, and as a result the leases in question were made. The effect of this transaction was to place two belt lines under one control, giving connection with all the roads entering East St. Louis and with all the car ferries crossing the river to St. Louis. This, of course, avoided competition and enabled the management to establish rates and avoid the danger of cutting rates. The practical effect was to create a monopoly, stifling competition, and that this was designed is manifest from the terms of the lease. To accomplish it, required not only the lease of the Venice & Carondelet Railway, which was built in the interest of and leased to the Illinois & St. Louis Railroad & Coal Company, but also a lease of the ferry transfer of the latter company. This placed both the belt railways and the ferry transfers under one control. In the lease of the Venice & Carondelet Railway the lessor agreed that during the term of the lease it would not engage in the business of switching cars from any connecting railway for any purpose whatever, nor permit any one operating its road so to do; and in the lease of the ferry the lessor agreed that during the term of the lease it would not engage in or carry on the business of transferring railroad cars in boats or barges across the Mississippi River to or from any point in St. Louis. It would be difficult to conceive a scheme which could more effectually stifle competition and create monopoly.

"Is a lease for ten years a consolidation of the franchises or property, within the constitutional provision? It is contended that the

term 'consolidation' means a permanent union of the interests, management and control of two roads, either in formation of a new company out of the consolidated one, or else by consolidated management of the old ones unitedly while their distinct corporate entities still remained. This distinction is true in the general sense in which one speaks of the 'consolidation' of railroads. The term may also mean the act of forming into a more firm or compact mass, body or system. The constitutional convention, representing the people of the state, sought to provide against monopolies, and to preserve to the public the benefit that would accrue from competition between parallel or competing lines of railway. It sought for practical results. It intended to provide that parallel or competing lines should continue to be competing, and this it aimed to accomplish by prohibiting the consolidation of the stock or the franchises or the property of any such competing lines of railway. The union of such lines was prohibited, in view of the objects sought to be accomplished. The term 'consolidate,' we think, must be construed to have been used in the sense of 'join' or 'unite.' To permit two such competing lines of railway under a single management and a single control would accomplish the very purpose which the constitution sought to prevent. We must have regard to the spirit and the object of that constitutional provision, and not juggle with the technical meaning of the word. The prohibition goes to the consolidation or uniting of the stock of two competing roads, or the franchises of two competing roads, or of the property of two competing roads. The doing of either would create the prohibited monopoly, and either is within the intendment and meaning of the constitutional provision. Nor do we think that there is force in the contention that this union or consolidation was by means of a temporary arrangement, if there-

> by that is accomplished which is prohibited by the constitution. If it be lawful, by means of a lease for 10 years, to consolidate and unite the properties of competing lines of railway, we perceive no reason why a lease for 99 years would not be equally valid. We cannot draw the line in that respect between what is permanent and what is temporary. Whatever produced the prohibited result is obnoxious to the spirit and the letter of the constitutional provision, and is illegal. We must deal with the result accomplished, without regard to the means employed. It cannot be permitted that one may effect a prohibited result by indirection which he may not lawfully accomplish by direct means. We must therefore hold that the leases in question practically effected a consolidation of the properties of two competing lines, and are within the inhibition of the constitution. Morrill v. Railroad Co., 55 N. H. 531; Gulf, C. & S. F. Ry. Co. v. State, 72 Tex. 404, 10 S. W. 81; State v. Atchison & N. R. Co., 24 Neb. 143, 38 N. W. 43."

Supposing that the stockholders of the Great Northern and Northern Pacific Railway Companies respectively, had transferred their stock holdings to a trustee, under an agreement that such trustee should hold and vote the stock of the railway companies in such a manner as to accomplish the very objects and purposes contemplated by the incorporators of the Northern Securities Company; can it be contended for a moment that this would not be an unlawful consolidation within the decision of the court in the Pearsall case?

What distinction can be drawn between the results accomplished by such a consolidation and the

one consummated through the Northern Securities Company.

As already stated, the latter ompany is but a trustee for its stockholders, and consequently acts for them in such manner as they may direct. It must necessarily conduct and control the two railway companies in a manner satisfactory to its Board of Directors and the persons holding its stock. The accomplished result is the same as though the stock of these two railway companies was placed in the hands of a trustee under an agreement, as above indicated.

The stockholders of the Great Northern and Northern Pacific Railway Companies have exchanged their stock holdings for the stock of the Northern Securities Company. The stock is thus pooled forever with the Northern Securities Company, and will be voted by that Company as the combined stockholders of the Northern Securities Company shall direct. The result is a consolidation of these two railway properties through the fiction of a holding company, which consolidation is as effective as though one railway company had acquired all of the stock of the other.

The purpose of the anti-consolidation laws of appellant is to secure competition between parallel and competing lines; not to prevent one form of consolidation and permit another. Now, under the form of consolidation shown in this case, the earnings of both these railway companies are pooled for the benefit of one set of stockholders, to-wit, those of the Northern Securities Company. What motive is

then left for competition? On the contrary, what stronger motive can exist for its destruction?

That this is what was sought to be accomplished by the promoters of this scheme, is shown beyond controversy in the testimony of the promoters themselves, and already quoted.

As Mr. Thorne said:

> "Well, of course, it became self-evident to me that it was to the interests of the Great Northern Company that the Northern Pacific stock should be put in such condition that it could not be used against the interests of the Great Northern * * * and when I became a shareholder in the Northern Securities Company, then, of course, I recognized the fact that it would be for the interest of both of those properties to be together where they could not antagonize one another to their harm." (Fols. 1697 and 1715).

It makes little difference how the result is accomplished. The Court should look beyond the form in these cases, and its conclusion should be determined by the results accomplished.

As said by Judge Jenkins in the case of *East St. Louis Connecting Ry. Co. v. Jarris*, 92 Fed. 743:

> "Whatever produces the prohibited result is obnoxious to the spirit and the letter of the constitutional provision and is illegal. We must deal with the result accomplished, without regard to the means employed. It cannot be permitted that one may effect a prohibited result by indirection, which he may not lawfully accomplish by direct means."

To the same effect see Pennsylvania Ry. Co. v. Commonwealth, 7 Atl. Rep. 368.

The court in *People v. Chicago Gas Trust Company*, 22 N. E. 804, said:

> "But of what avail is it that any number of gas companies may be formed under the general incorporation law of the state, if a trust company can be clothed with the power of buying up and holding the stock and property of such companies, and through the control thereby attained, can direct all their operations and weld them into one huge combination."

So, too, in *Ford v. Chicago Milk Shippers Ass'n.*, 39 N. E. 655, the Court said:

> "Where the organization of the corporate body or the control exercised by the stockholders in determining the agencies selected for managing its business, and the business, as thus conducted, managed and controlled, is against public policy or in a contravention of the statute of a state, such acts of the corporate body and of the individual shareholders are the combined acts of all and courts are not so powerless that they may not prevent the success of ingenious schemes to evade or violate the law. There can be no immunity to evasion of the policy of the state by its own creations."

In *Joy v. St. Louis*, 138 U. S. 50, the Court said:

> "Railroads are common carriers and owe duties to the public. The rights of the public in respect to these great highways of communication should be fostered by the courts; and it is one of the most useful functions of a court of equity that its methods of procedure are capable of being made such as to accommodate themselves to the development of the interests of the public."

In *Louisville & Nashville Ry. Co. v. Kentucky*, 161 U. S. 688, the Supreme Court said:

> "Where companies situated as these are, being parallel and competing, claim that authority to consolidate has been granted to them, they must be able to point to words in the statute, which admit of no other reasonable construction; for it will not be assumed that the law-making power has authorized the creation of a monopoly so detrimental to public interest."

In *Harding v. American Glucose Co.*, 182 Ill. 551, the Court said:

> "It makes no difference whether the combination is effected through the instrumentality of trustees and trust certificates, or whether it is effected by creating a new corporation, and conveying to it all the property of the competing corporations. The test is whether the necessary consequence of the combination is the controlling of prices, or limiting of production or suppression of competition."

That this Court did not have in mind the purchase of the stocks in the manner complained of in this action, is clear from the language used by the court in the Pearsall case:

> "Doubtless these stockholders could lawfully acquire, *by individual purchase*, a majority, or even the whole of the stock of the reorganized company."

This is far from saying that the stock of the Northern Pacific Railway Company could be acquired by a corporation for perpetual ownership, where

such holding corporation is the result of a combination or conspiracy formed for such a purpose and where such holding company already owns all, or even a majority of, the stock of the Great Northern Railway Company.

The stock acquired in the latter manner would not, as said by the Court:

> "Become completely dissevered and the interests of the stockholders of each company thus become antagonistic."

The conspiracy or combination formed between the stockholders of these two railway companies for the purpose of uniting the control of the companies in a third corporation, cannot be separated from the corporations themselves. It is one of those cases where the law recognizes the acts of the stockholders, as the acts of the corporation itself.

In discussing the question of whether the action of the stockholders, acting as individuals, but by virtue of their stock holdings was the act of the corporation, the Court in *People v. North River Sugar Refining Company*, 24 N. E. Rep. 837, said:

> "But here we encounter the stronghold of the appellant's argument, which is that, if the corporations are in some manner in the combination, they are there solely as the result of a contract other than their own; are there without corporate action on their part; and so are sufferers, and not sinners. The reasoning leading to that result is so severely technical as to have suggested a justification almost reminding one of an apology. We are called upon to sever the corporation, the abstract legal entity, from the living and acting corporators; as it were, to separate in our thought the soul from the body,

and, admitting the sins of the latter, to adjudge that the former remains pure. * * *

"The abstract idea of a corporation, the legal entity, the impalpable and intangible creation of human thought, is itself a fiction, and has been appropriately described as a figure of speech. It serves very well to designate in our minds the collective action and agency of many individuals as permitted by the law; and the substantial inquiry always is what, in a given case, has been that collective action and agency. As between the corporation and those with whom it deals, the manner of its exercise usually is material, but, as between it and the state, the substantial inquiry is only what that collective action and agency has done; what it has in fact accomplished; what is seen to be its effective work; what has been its conduct. It ought not to be otherwise. The state gave the franchise, the charter, not to the impalpable, intangible, and almost nebulous fiction of our thought, but to to the corporators, the individuals, the acting and living men, to be used by them, to rebound to their benefit, to strengthen their hands, and add energy to their capital. If it is taken away, it is taken from them as individuals and corporators, and the legal fiction disappears. The benefit is theirs, the punishment is theirs, and both must attend and depend upon their conduct; and when they all act, collectively, as an aggregate body, without the least exception, and so acting reach results and accomplish purposes clearly corporate in their character, and affecting the vitality, the independence, the utility, of the corporation itself, we cannot hesitate to conclude that there has been corporate conduct which the state may review, and not be defeated by the assumed innocence of a convenient fiction."

In the case of *State v. Standard Oil Company*, 30 N. E. Rep., 287. The Court said:

"So that the idea that a corporation may be

a separate entity, in the sense that it can act independently of the natural persons composing it, or abstain from acting, where it is their will that it shall, has no foundation in reason or authority, is contrary to the fact, and to base an argument upon it when the question is as to whether a certain act was the act of the corporation or of its stockholders, cannot be decisive of the question, and is therefore illogical; for it may as likely lead to a false as to a true result.

"Now, so long as a proper use is made of the fiction that a corporation is an entity apart from its shareholders, it is harmless, and, because convenient should not be called in question; but where it is urged to an end subversive of its policy; or such is the issue, the fiction must be ignored, and the question determined whether the act in question, though done by shareholders—that is to say, by the persons uniting in one body—was done simply as individuals, and with respect to their individual interests as shareholders, or was done ostensibly as such, but, as a matter of fact, to control the corporation, and affect the transaction of its business in the same manner as if the act had been clothed with all the formalities of a corporate act. This must be so, because, the stockholders having a dual capacity, and capable of acting in either, and a possible interest to conceal their character when acting in their corporate capacity the absence of the formal evidence of the character of the act cannot preclude judicial inquiry on the subject. If it were otherwise, then in one department of the law fraud would enjoy an immunity awarded to it in no other."

VIII.

TO ALLOW A CONSOLIDATION OF THE LINES AND PROPERTY OF THESE TWO RAILWAY COMPANIES BY AND THROUGH THE NORTHERN SECURITIES COMPANY, AND TO PERMIT THAT COMPANY TO EXERCISE ITS CORPORATE POWERS OVER SUCH PROPERTY, IN VIOLATION OF THE LAWS OF APPELLANT, WILL DEPRIVE APPELLANT OF A RIGHT GUARANTEED TO IT BY SECTION ONE OF ARTICLE IV OF THE CONSTITUTION OF THE UNITED STATES.

The testimony already referred to shows conclusively that the purpose of the incorporators of the Northern Securities Company, and that Company itself, is to effect a consolidation of the lines and properties of the Great Northern and Northern Pacific Railway Companies in such a way as to evade and violate the laws of appellant.

Prior to the organization of the Northern Securities Company, the Great Northern Railway Company had always held its stockholders' meetings in the State of Minnesota. On November 25th, 1901, it amended its by-laws so that all stockholders' meetings should be thereafter held in the City of New York (See Fol. 3630, also Fol. 4718 of the record.)

The stockholders' meetings of the Northern Pacific Railway Company are also held outside the State of Minnesota.

The purpose of the amendment to the by-laws of the Great Northern Railway Company is to allow

the Northern Securities Company to exercise its corporate powers acquired from the State of New Jersey outside the limits of the State of Minnesota, so that the laws of this State can be violated without such violator entering the State.

Appellant contends that no portion of the sovereign power of any other state can be used directly or indirectly for the purpose of violating the laws of this State. That while the Northern Securities Company is a valid corporation under the laws of the State of New Jersey, and has acquired a portion of the sovereign power of that State, it cannot use its powers so acquired for other than lawful purposes; and that to use such powers for the purpose of violating the laws of this State is unlawful and an invasion of a right guaranteed to appellant under Section one of Article IV of the Constitution of the United States which provides that "*full faith and credit shall be given in each state to the public acts * * * of every other state.*"

If the State of New Jersey had created a corporation, by a special act of its legislature, in the charter of which it was provided that the

> purpose and object of this corporation shall be to acquire the stock of the Great Northern and Northern Pacific Railway Companies, corporations owning and operating railroads in the state of Minnesota for the express purpose of consolidating such corporations in violation of the laws of the State of Minnesota.

such an act, on the part of the State of New Jersey, would have been void, for the reason that New

Jersey would not be giving full faith and credit to the public acts of Minnesota.

New Jersey cannot delegate a part of its sovereign power to a corporation for the express purpose of violating the laws of another state.

The State of New Jersey has, by general law, authorized the organization and creation of corpoations within its borders. By this means it has delegated a part of its sovereign power to such persons as see fit to avail themselves of it. No body of men can appropriate this delegated sovereign power of New Jersey for the purpose of violating the laws of another state, and thus be allowed to do indirectly that which the State of New Jersey, acting directly in the exercise of its sovereign power, cannot do under the constitution.

We, therefore, contend that the Northern Securities Company is powerless to acquire the stocks of the Great Northern and Northern Pacific Railway Companies for the purpose of evading or violating the laws of appellant.

A state, acting in its independent and sovereign capacity, had the right, prior to the adoption of the constitution, to have compelled another State by force if necessary, to observe and treat with respect its laws in case such state had tried to violate the same in the manner above indicated.

As stated by this Court in the case of *Missouri v. Illinois & Chicago District*, 180 U. S. 241:

> "If Missouri were an independent and sovereign state all must admit that she could seek a remedy by negotiation, and, that failing, by force."

When appellant surrendered that right, as it did in accepting the constitution, it and its citizens received from the State of New Jersey in consideration therefor the constitutional compact that the State of New Jersey itself would not, nor would it authorize any one else to, violate its public acts.

The laws of New Jersey, under which the Northern Securities Company was organized provide that a corporation may be formed thereunder "*for any lawful purpose.*" A corporation cannot be organized under this act, for the purpose, declared or otherwise, of acquiring the stocks of railway corporations in violation of the laws of the state where such corporations are created, and transact their business; because that would not be forming a corporation for a "lawful purpose;" nor would such a corporation be engaged in a lawful business. See *U. S. v. Northern Securities Co., et al., supra.*

We have already shown, that the sole intent and purpose of the incorporators of the Northern Securities Company, was to acquire the stocks of the Great Northern and Northern Pacific Railway Companies, for the purpose of consolidation and control. If this is in violation of the laws of the State of Minnesota, then the Northern Securities Company can claim no protection or immunity by reason of being organized under the laws of New Jersey.

IX.

APPELLANT CONTENDS THAT IT HAS THE RIGHT TO AVAIL ITSELF OF THE ACT OF CONGRESS OF JULY 2, 1890, ENTITLED "AN ACT TO PROTECT TRADE AND COMMERCE AGAINST UNLAWFUL RESTRAINTS AND MONOPOLIES," TO THE EXTENT, AT LEAST, OF DEFEATING THE CLAIM ON THE PART OF THE NORTHERN SECURITIES COMPANY THAT IT HAS THE RIGHT TO OWN THE STOCK OF THE GREAT NORTHERN AND NORTHERN PACIFIC RAILWAY COMPANIES, AND TO CONTROL SAID CORPORATIONS WITHIN THE STATE OF MINNESOTA; AND ALSO TO THE CLAIM OF SAID NORTHERN SECURITIES COMPANY THAT ITS ALLEGED PURCHASE AND OWNERSHIP OF SUCH STOCK GIVES IT CONTRACT RIGHTS, WHICH ARE PROTECTED BY THE CONSTITUTION OF THE UNITED STATES.

The appellant brings this action in its governmental capacity on behalf of all the citizens of the State, as well as in its individual capacity as the owner and trustee of property within the State, and also as a shipper over the lines of railway of the two railway companies in question.

Acting in its capacity as *parens patriæ*, it can enforce an action on behalf of the citizens of the State.

See

Missouri v. Illinois & Chicago Dist., 180 U. S. 208;

Kansas v. Colorado, 185 U. S. 142.

Possibly the appellant cannot maintain an action for the purpose of primarily enforcing the act of Congress. That may be a function which rests alone with the Federal Government.

The act of Congress above referred to, however, is a remedial statute, and an action can be maintained by any person or body of persons who may be injured by its violation; and the State of Minnesota, acting in its sovereign capacity, can maintain an action on behalf of all the citizens of the State when such injury or damage is to the public.

It has been held by this and other courts that any person who sustains an injury by reason of a violation of a remedial statute, or any statute which makes unlawful that which was, prior to its passage, lawful, can maintain an action for, or enjoin such violation.

The act of Congress above referred to in effect declares that contracts or combinations in restraint of trade are a nuisance and injurious to the individual and public welfare. Such being the case, any person, or body of persons, who may be injured by the commission of such a nuisance can maintain an action to enjoin the same.

In the case of *Kaufman v. Stein*, 37 *N. E. Rep.* 333, an action was brought by a private individual to enjoin the erection of a building, the maintenance of which, under an ordinance passed by the City of Terre Haute, was declared to be unlawful. In

passing upon the question as to whether or not such action could be maintained, the Court said:

> "An individual has, and always had, the right to enjoin the erection or continuance of a nuisance, where he will suffer a special injury or annoyance, different in kind and degree to that sustained by the public generally. Keiser v. Lovett, 85 Ind. 240; Reichert v. Geers, 98 Ind. 73; Owen v. Phillips, 73 Ind. 285. In Baumgartner v. Hasty, 100 Ind. 575, at page 579, it is said: 'It is one of the oldest common-law rules that an individual citizen may, without notice, abate a nuisance, and, if necessary, to effectually abate it, destroy the thing which creates.'"

See also,

Wier's Appeal, 74 Pa. St. Reports 230.

Hayes v. Michigan Central Railroad Co., 111 U. S. Reports 228-239.

Union Pacific Railway Co. v. McDonald, 152 U. S. Reports, 283.

Atchison, Topeka & Santa Fe Ry. Co. v. Reesman, 60 Fed. Rep. 370.

In the latter case, Justice Brewer said:

> "The contention of the company is that the fence statute referred to was enacted for the benefit of the proprietors of adjoining lands, and that the plaintiff, as an employe of the railroad company, takes nothing by reason of the failure of the company to comply with its terms. It is doubtless true that when a right is given by statute, only those to whom the right is in terms given can avail themselves of its benefits, but it does not follow that when a duty is so imposed a violation of that duty exposes the wrongdoer to liability to no person other than those specifically named in the statute.

> On the contrary, it is not unreasonable to say that every party who suffers injury by reason of the violation of any duty is entitled to recover for such injuries. At any rate, it is clear that the fact that certain classes of persons were intended to be primarily protected by the discharge of a statutory duty will not necessarily prevent others, neither named nor intended as primary beneficiaries, from maintaining an action to recover for injuries caused by the violation of such legislative command. It may well be said that, though primarily intended for the benefit of one class, it was also intended for the protection of all who need such protection."

We are not unmindful of the fact, however, that some of the Circuit Courts have held that a private person cannot maintain an action under this statute, excepting for damages; but there is difference of opinion among the different Circuit Courts on this subject, as stated by Judge Phillips in the case of *Greer, Mills & Co. v. Stoller*, 77 Fed. Reporter, 3.

The question has never been fully considered or decided by this Court. In the case of *Bement v. National Harrow Co.*, 186 U. S. 70, quoting from page 87, this Court said:

> "The plaintiff contends in the first place that only the Attorney General of the United States can bring an action under the statute, excepting that by section 7 of the act any person injured in his business or property, as provided for therein, may himself sue in any Circuit Court of the United States in the district in which the defendant resides or is found. Assuming that the plaintiff is right so far as regards any suit brought under that act, we are nevertheless of opinion that any one sued upon a contract may set up as a defense that it is a violation of the

act of Congress, and if found to be so, that fact will constitute a good defense of the action."

This brings us to another right under this act, which the appellant can assert and enforce against the Northern Securities Company. The latter company claims that because it is organized under the laws of the State of New Jersey, it is outside of the jurisdiction of the State of Minnesota, and that having purchased or acquired the stocks of the Great Northern or Northern Pacific Railway Companies outside of the State of Minnesota, it has contract rights which are protected by the Constitution of the United States, and that under such conditions the appellant can not enforce its laws against it.

A contract is protected by the Constitution in so far only as it is a valid contract. If the contract under which the Northern Securities Company claims to have acquired these stocks is invalid, then there is no contract to be protected. If the acquisition of these stocks in the manner disclosed by the testimony creates or tends to create a monopoly, or restrains, or tends to restrain interstate commerce, or places with the Northern Securities Company the power, although unexercised, to do these things, then it is in violation of the act of Congress above referred to, and can receive no constitutional protection, for the reason that it is not a valid contract right; and as said by this Court in the case of *Bement v. National Harrow Co.*, 186 U. S. 70, above referred to, the appellant can avail itself of this act for the purpose of defeating such a claim.

X.

APPELLANT CONTENDS THAT THE LAWS OF MINNESOTA, PROHIBITING THE CONSOLIDATION OF THESE RAILWAY COMPANIES, AS WELL AS THE STATE ANTI-TRUST ACT OF 1899, IMPOSE OBLIGATIONS UPON THE STOCKHOLDERS OF THESE TWO RAILWAY COMPANIES, WHICH FOLLOW THE STOCK INTO WHATSOEVER HANDS IT MAY PASS, AND CAN BE ENFORCED AGAINST SUCH OWNER OR HOLDER OF THE STOCK WHERESOEVER FOUND.

As stated by this Court in the *Delaware Tax case*, 18 Wall, quoting from page 229:

> "In the first place, the share of a stockholder is, in one aspect, something different from the capital stock of the company; the latter only is the property of the corporation; the former is the individual interest of the stockholder, constituting his right to a proportional part of the dividends when declared, and to a proportional part of the effects of the corporation when dissolved, after payment of its debts. Regarded in that aspect it is an interest or right which accompanies the person of the owner, having no locality independent of his domicile. But whether, when thus regarded, it can be treated as so far severable from the property to which it relates as to be taxable independent of the locality of the latter is a question not necessary now to decide. The argument of the appellant assumes that it is thus severable.
>
> In any aspect, if provision for the taxation of the shares at the locality of the company be made in its charter, their taxability at such locality is annexed as an incident to the shares, and it does not matter where the domicile of the owner may be."

See, also, *Nashua Savings Bank v. Anglo-American Land, Mortgage and Agency Company*, 189 U. S. 221.

At the outset, it is to be noted, that the Northern Securities Company did not purchase the stocks of the two Railway Companies in the open market; but on the contrary acquired such stocks as a result of a conspiracy or combination entered into by its organizers, and subsequent stockholders, for the purpose of violating the laws of this state. It has never purchased a share of stock. It has simply issued its own stock in exchange for the stocks of the Railway Companies; but even though the Northern Securities Company did purchase the stock of these Railway Companies in the open market, as contended, it would still be bound by the laws of this state; and if such ownership is in violation of such laws then it can not own or hold the stocks.

The stockholders of these two Railway Companies have been granted the right, by the State of Minnesota, to be, or to exist as, corporations within the State.

The Northern Pacific Railway Company occupies the position, toward the laws of this state, of a domestic corporation. When it filed its Articles of Incorporation in this state and entered it for the purpose of transacting business, it became, a domestic corporation and agreed to be bound by appellants' laws.

Section 2753 of the Statutes of Minnesota compilation 1894, provides when and how a foreign corporation may do business in the State.

Sections 2754 and 3425 of the Statutes of Minnesota, compilation 1894 provide as follows:

> "§ 2754. That upon and from the filing of its said articles of incorporation as above provided, which shall be deemed to be an acceptance of the benefits of this act, the said corporation is hereby declared to be a legal domestic corporation of this State.
>
> § 3425. No foreign corporations now or hereafter doing business in this state, shall have, possess, or exercise any right, privileges, or immunities not possessed by domestic corporations; but, unless otherwise provided by law, shall in all respects be deemed, if it shall remain in (this) state for sixty days next ensuing after the passage of this act to be a domestic corporation, and entitled to all the rights, privileges and immunities of domestic corporations, subject to all laws of this state which are now in force or may be hereafter enacted."

It is a well settled principle of law, that the public statutes of a state relating to a corporation, become and are a part of the charter of a corporation created in, or permitted to do business in, such state. A part of the consideration which the state receives for granting the right to be a corporation and exercise the powers and privileges as such in the state, is an agreement on the part of such corporation and its stockholders that it and they will observe the laws of the state.

In Supreme Lodge, K. P. v. Weller, 25 S. E., 891, the Supreme Court of Virginia announced this rule in the following language:

> "It is not necessary that the general law should be copied in the charter; it forms an es-

> sential part of it and all parties are bound by its terms, whether copied in the charter or found only on the statute books."

The Supreme Court of Illinois in *People v. Chicago Gas Co.*, 22 N. E. 798, said:

> "The charter of a corporation does not consist of the articles of association alone, but of such articles taken in connection with the law under which the organization takes place. The provisions of the law enter into and form a part of the charter."

A part of the consideration which appellant received for the lands granted to the Great Northern and Northern Pacific Railway Companies, or the subsidiary companies now controlled by them, was the agreement on the part of such railroad corporations and their stockholders that these lines of railway should be maintained and operated by such corporations, as competing lines, in accordance with the laws of appellant.

As stated, by the Court in the case of *State v. Central Iowa Railroad Company*, 32 N. W. 409:

> "A railroad company having constructed and put in operation its road, in part at least, by public aid in the way of taxation, it has no right to abandon its road or turn it over to another company to the injury of the state or any portion of the citizens."

One of the conditions and considerations demanded by appellant from these corporations for the right to be a railroad corporation and to exercise the powers and privileges of such, within

its borders, is that free and open competition in both freight and passenger rates, shall exist between the lines of railway operated by such corporations; and a violation of these statutes is a violation of the contract rights or obligations of the corporation, as well as of the stockholders thereof, with the state.

This contract obligation to obey the laws of the state rest primarily upon the stockholders of the corporation. It is one of the conditions which the state demands of the persons about to form a corporation. It in effect says to them:

> If you will obey the laws of the state relating to the corporation you wish to form, the state will permit you to organize as a corporation.

This obligation once assumed, as it is when the incorporators file the articles adopted by them and become a corporation, forever after remains upon such incorporators, and all persons succeeding them as stockholders of the corporation.

That this contract is a binding one and cannot be avoided is settled in the case of *Thomas v. Railway Company*, 101 U. S. 71, wherein this Court said:

> "That principle is that where a corporation, like a railroad company, has granted to it by charter a franchise intended in large measure to be exercised for the public good, the due performance of those functions being the consideration of the public grant, any contract which disables the corporation from performing those functions which undertakes, without the consent of the state, to transfer to others

the rights and powers conferred by the charter and to relieve the grantees of the burden which it imposes, is a violation of the contract with the state, and is void as against public policy. This doctrine is asserted with remarkable clearness in the opinion of this Court delivered by Mr. Justice Campbell, in the York and Maryland Line Railroad Co. v. Winans, 17 How. 30. The corporation in that case was chartered to build and maintain a railroad in Pennsylvania by the legislature of that state. The stock in it was taken by a Maryland corporation, called the Baltimore and Susquehanna Railroad Company, and the entire management of the road was committed to the Maryland Company, which appointed all the officers and agents upon it, and furnished the things and its effect upon the liability of the rolling stock. In reference to this state of Pennsylvania corporation for infringing a patent of the defendant in error, Winans, this Court said: 'This conclusion (argument) implies that the duties imposed upon the plaintiff by the charter are fulfilled by the construction of the road, and that by alienating its right to use, and its powers of control and supervision, it may avoid further responsibility. But those acts involve an overturn of the relations which the charter has arranged between the corporation and the community. Important franchises were conferred upon the corporation to enable it to provide facilities for communication and intercourse, required for the public convenience. Corporate management and control over these were prescribed, and corporate responsibility for their insufficiency provided as a remuneration to the community for their grant. The corporation cannot absolve itself from the performance of its obligations without the consent of the legislature. *Beman v. Rufford*, 1 Sim. N. S. 550; *Winch v. B. & L. Railway Co.*, 13 L. & Eq. 506."

See also

Gibbs v. Baltimore Gas Co., 130 U. S. 396.
Bank of Augusta v. Earle, 13 Peters, 519.

The stock of the Great Northern and Northern Pacific Railway Companies, the title to which is placed in the Northern Securities Company, must be deemed to be held by the last named company as though located in and subject to all the laws of the State of Minnesota; and every power sought to be exercised by it, by virtue of such stockholding, must be in harmony with and not in violation of the laws of the State of Minnesota.

The situs of the capital stock of a corporation is in the state creating it.

See *Kellenik v. Huron Copper Mining Company*, 177 U. S. page 1.

There it must always rest; and one who purchases it, takes it with knowledge of that fact, and subject to the limitations of the laws of the state where, in law, the stock is located as well as any other State which it may enter.

The Northern Securities Company can acquire no title to this stock, nor exercise any power by reason of this stockholding, or any management or control over the Great Northern and Northern Pacific Railway Companies, which is in violation of or which tends to contravene the laws of appellant.

The stockholders of a corporation, as well as the corporation itself, can perform no acts nor make any contracts either within or without the state creating such corporation, except such as are au-

thorized by its charter or some general law of the State relating to it. It follows as a necesary corollary, that a corporation, as well as its stockholders, can perform no act or make any contract or agreement which violates a remedial statute of a state creating such corporation.

The Northern Securities Company having taken the stocks of these two Railway Companies with full knowledge of the statutory provisions of appellant, it is bound by them. In its articles of incorporation, it states that it was organized to purchase the stock of railway companies, not only in the State of New Jersey, but *any state in the Union*," and when it attempts to acquire the stocks of any corporation created outside of the State of New Jersey, it at that instant becomes bound by the laws of the state creating the corporation, whose stock it attempts to acquire.

On this subject this Court, in *Pinney v. Nelson*, 183 U. S. 150, said:

> "As then a corporation can have no legal existence outside of the state in which it is incorporated, the contract of the stockholders with one another, by which the corporation is created, is presumed to have been made with reference to the laws of that state, nothing being said in the charter to the contrary. But as comity permits a corporation to enter another state and do business therein, it is competent for the stockholders in making their charter to contract with reference to the laws of a state in which they propose the corporation shall do business. And in this case the stockholders in their charter specified that the purpose of the incorporation was partly business beyond the limits of Colorado, and that

the principal part of such outside business should be carried on in California. Not content to rely upon the general authority which by the rules of comity the Colorado corporation would have to enter California, and transact business therein, they in terms set forth that a part of the purpose of the incorporation was the transaction of business by the corporation in California. Now, when they in terms specified that they were framing a corporation for the purpose of having that corporation do business in California is it not clear that they were contracting with reference to the laws of that state? Contracting with reference to the laws of that state they must be assumed to know the provisions of those laws, that by them a personal liability was cast upon the stockholders in corporations formed under the laws of the state, and that that same liability was also imposed upon the stockholders of corporations formed under the laws of other states and doing business within California. How can it be said that those laws do not enter into the contract and control as to all business done in pursuance of that contract within the limits of California? Suppose these same stockholders in Colorado had formed a partnerhip with the expressed intent of carrying on business in California, would not that expressed intent be a clear reference to the laws of California and an incorporation of those laws into the liabilities created by the partnership business in California? And if this rule obtains as to contracts of partners between themselves, why not also as to contracts of stockholders between themselves in forming a corporation?"

It is contended by the appellees, the Northern Securities Company, and the Northern Pacific Railway Company respectively, that appellant can not

enforce its laws against either of them, because the first is a stockholder of the second, and the second being a corporation created under the laws of Wisconsin, to enforce the laws of appellant against it as attempted in this case, would be an interference with, or regulation of the internal affairs of the Northern Pacific Railway Company, the regulation of which rests entirely with the state creating it. There are three good and sufficient answers to this contention:

FIRST: The laws of Wisconsin prohibit the consolidation of parallel and competing lines of railway in almost identically the same language as those sought to be enforced in this action, and for this reason there is no conflict of regulation. The rights acquired by the Northern Pacific Railway Company from the State of Wisconsin are subject to the same conditions as are imposed by the laws of appellant sought to be enforced in this action. Therefore the Northern Pacific Railway Company, or its stockholders have no rights granted by the State of Wisconsin, which are in any way infringed upon or taken away by an enforcement of the laws of appellant.

SECOND. That under the laws of appellant relating to the admission of foreign corporations within its borders, which laws have already been referred to, such foreign corporation must file its Articles and becomes a domestic corporation, the same as though incorporated within the State. This makes such foreign corporation a domestic one with the

same Articles as those adopted in the State where the corporation was first formed; such being the case, the appellant has full power and authority to regulate and control the method of voting the stock of that corporation, especially in so far as such voting relates to and controls property within its borders.

THIRD. Under the Articles of Incorporation of the Northern Pacific Railway Company, adopted in Wisconsin, and afterwards filed with appellant, said corporation is authorized and empowered to build, operate and maintain railroads in and through the State of Minnesota. (See Fols. 4544-4545 of the record; also Fols. 4595-4596 of the record).

Under the decision of *Pinney v. Nelson*, above referred to, the stockholders of the Northern Pacific Railway Company are as fully bound by the laws of appellant in relation to their rights and obligations as such stockholders, as though incorporated in the first instance under the laws of appellant.

But, regardless of either one of these grounds, appellant can enforce its laws, so as to prevent the consolidation of the lines of railway of the Northern Pacific and Great Northern Railway Companies. The Great Northern Railway Company is a corporation created by appellant; and the Northern Pacific Railway Company can have no power or authority to build, own or operate any railway lines within the borders of appellant,excepting by authority or permission granted by or obtained from it. When the latter company made application to file its Articles of Incorporation with appellant, and

such filing was allowed, it was on condition that, as to all property within its borders, its laws should be supreme; and by so filing its Articles, the stockholders of the Northern Pacific Railway Company accepted those conditions and became bound by them.

The right to own and vote stock are rights which the stockholder can part with or waive. These rights do not relate to the internal affairs of the corporation, but rest entirely with the stockholder; and when such stockholder or stockholders make application to a state, other than that creating the corporation, for the right to do business and own property within such state, they then agree to be bound by such conditions as the laws of the state to which they make application may impose; and it is to this extent and in relation to these obligations and conditions appellant is endeavoring to enforce its laws.

In this connection, the Court should continually bear in mind that the Northern Securities Company is but a device and scheme, through which the stockholders of these two companies seek to unite the voting power of the stock. Each stockholder of the Northern Pacific Railway Company has simply turned his stock over to the Northern Securities Company, and received therefor the stock of the latter company. The same is true of the Great Northern stockholders. The stockholders of the two railway companies thus make the Northern Securities Company a mere voting trustee, virtually pooling the voting power by means of this device.

XI.

WHAT WE HAVE SAID IN THE PRECEDING SUBDIVISION AS TO THE ANTI-CONSOLIDATION LAWS BEING OBLIGATIONS IMPOSED UPON THE STOCKHOLDERS AND FOLLOWING THE STOCK, IS EQUALLY TRUE OF THE LAWS OF 1899, KNOWN AS APPELLANT'S ANTI-TRUST LAW.

The act above referred to, in so far as its provisions are applicable to this case, is as follows:

> "Section 1. Any contract, agreement, arrangement, or conspiracy or any combination in the form of a trust, or otherwise, hereafter entered into which is in restraint of trade or commerce within this State, or in restraint of trade or commerce between any of the people of this State and any of the people of any other State or Country, or which limits or tends to limit or control the supply of any article, commodity or utility, or the articles which enter into the manufacture of any article (of) utility, or which regulates, limits or controls or raises or tends to regulate, limit, control or raise the market price of any article, commodity or utility, or tends to limit or regulate the production of any such article, commodity or utility, or in any manner destroys, limits or interferes with open and free competition in either the production, puchase or sale of any commodity, article or utility is hereby prohibited and declared to be unlawful.
>
> That when any corporation heretofore or hereafter created, organized or existing under the laws of this State, whether general or special, hereafter unites in any manner with any other corporation wheresoever created, or with any individual whereby such corporation surrenders or transfers, by sale or otherwise, in

whole or in part, its franchise, rights or privileges or the control or management of its business to any other corporation or individual, or whereby the business management or control of the business of such corporation is limited, changed or in any manner affected, and the purpose or effect of such union or combination is to limit, control or destroy competition in the manufacture or sale of any article or commodity, or is to limit or control the production of any article or commodity, or is to control or fix the price or market value of any article or commodity or the price or market value of the material entering into the production of any article or commodity, or in case the purpose or effect of such union or combination is to control or monopolize in any manner the trade or commerce, or any part thereof, of this State, or of the several States, such union, combination, agreement, arrangement or contract is hereby prohibited and declared to be unlawful.

* * * * * * *

Sec. 3. Any corporation heretofore or hereafter created, organized or existing under the laws of this State which shall hereafter either directly or indirectly make any contract, agreement or management, or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, forfeit its charter, rights and franchises, and it shall thereafter be unlawful for such corporation to engage in business, either as a corporation or as a part of any combination, trust or monopoly, except as to the final disposition of its property under the laws of this state.

* * * * * * *

Sec. 6. That for the purpose of carrying out the provisions of this act, any citizen of this State may, and it is hereby declared to be the duty of the Attorney General to, institute, in the name of the State, proceedings in any court

of competent jurisdiction against any person, partnership, association or corporation who may be guilty of violating any of the provisions of section one (1) of this act, for the purpose of imposing the penalties imposed by this act, or securing the enforcement of section three (3) hereof.

Sec. 8. This act shall take effect and be in force from and after its passage.

Approved April 21st, 1899."

Section 1 is practically identical with section 1 of the National Anti-trust act, except that it contains added provisions. The only difference, except the additional provisions, is the re-arrangement of words contained in a single sentence.

A reading of the state law shows how far reaching it is in its application to any form of combination or conspiracy, agreement or arrangement, which restrains, or tends to restrain, or limits or tends to limit in any way, the price of a commodity or article, or its free and uninterrupted transportation. The same interpretation as to the application of this act to railroads must be given as is given to the Federal Anti-trust act, excepting that the state act, in its direct application, must be limited to state commerce. That this law is applicable to railroads is fully settled by the case of

United States v. Freight Association, 166 U. S. 290.

United States v. Joint Traffic Association, 171 U. S. 504.

It is equally well settled in these cases that such statutes prohibit the entering into of any contract,

agreement, arrangement or conspiracy or any combination in the form of a trust or otherwise, which lodges in any association or corporation *the power* to restrain trade or commerce between states.

It was also held in the Joint Traffic Association case, (page 571) that, "the cases cited by counsel in regard to the constitutional right of the citizen to make contracts relating to his lawful business, are not inconsistent with the existence of the power in Congress to prohibit contracts of the nature involved in this case."

For limitations as to the right of citizens under various circumstances to make contracts, see

Frisbee v. United States, 157 U. S. 160.

The provisions of this act of appellant being taken largely from the Federal Anti-trust act, the same interpretation given to the latter act should be given to this.

See

Ryalls v. Mechanics Mills, 5 L. R. A. 667.

Metropolitan Railroad Company v. Moore, 121 U. S. 558.

It will doubtless be contended by appellees here as it was in the court below, that because the act is broader in its language that the National act, it has no application to railroads or railway traffic. Also that the enactment by appellant of a state railroad and warehouse commission act shows that the act in question was not intended to apply to rail-

roads. These two contentions are fully answered in the cases above referred to.

Doubtless it will also be contended by appellees as it was in the court below that this act can have no application to the Northern Securities Company because that Company was formed outside of appellant, and acquired the stock of the Northern Pacific and Great Northern Railway Companies outside the borders of appellant; and that the enforcement of this law will deprive the Northern Securities Company of a constitutional right to freely contract and acquire property. These contentions are further answered by what we have said in subdivisions VIII, IX and X of this brief.

If it should be contended by counsel for appellees before this court, as it was in the court below, that the appellant has no power to pass and enforce an anti-trust law similar to the one under consideration, for the reason that it interferes with commerce and the freedom of contract, we call the Court's attention to the following language from the decision of this court in *United States v. Knight*, 156 U. S., 11:

> "It cannot be denied that the power of a State to protect the lives, health and property of its citizens, and to preserve good order and the public morals, 'the power to govern men and things within the limits of its dominion,' is a power originally and always belonging to the States, not surrendered by them to the general government, nor directly restrained by the Constitution of the United States, and essentially exclusive. The relief of the citizens of each State from the burden of monopoly and

the evils resulting from the restraint of trade among such citizens was left with the States to deal with, and this court has recognized their possession of that power even to the extent of holding that an employment or business carried on by private individuals, when it becomes a matter of such public interest and importance as to create a common charge or burden upon the citizen; in other words, when it becomes a practical monopoly, to which the citizen is compelled to resort and by means of which a tribute can be exacted from the community, is subject to regulation by state legislative power.

* * *

It is vital that the independence of the commercial power and of the police power, and the delimination between them, however sometimes perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the States as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne, than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality."

XII.

It was contended by counsel for appellees in the Court below, and doubtless the same claim will be made before this Court, that, to enforce these laws of appellant prohibiting the consolidation of parallel and competing lines, as well as the State Anti-trust act, will amount to an interference with interstate commerce. In answer to this, we call the attention of the Court to the language used in *Louisville & Nashville Railway Company v. Kentucky*, 161 U. S. 677, as follows:

> "But little need be said in answer to the final contention of the plaintiff in error, that the assumption of a right to forbid the consolidation of parallel and competing lines is an interference with the power of congress over interstate commerce. The same remark may be made with respect to all police regulations of interstate railways. All such regulations interfere indirectly, more or less, with commerce between the states, in the fact that they impose a burden upon the instruments of such commerce, and add something to the cost of transportation, by the expenses incurred in conforming to such regulations. These are, however, like the taxes imposed upon railways and their rolling stock, which are more or less according to the policy of the state within which the roads are operated, but are still within the competency of the legislature to impose. It is, otherwise, however, with respect to taxes upon their franchises and receipts from interstate commerce, which are treated as a direct burden. There are certain intimations in some of our opinions, which might perhaps lead to an inference that the police power cannot be exercised over a subject confined

exclusively to congress by the Federal Constitution. But while this is true with respect to the commerce itself, it is not true with respect to the instruments of such commerce.

It was said in Sherlock v. Alling, 93 U. S. 99, 103, 104 and quoted with approbation in Plumley v. Massachusetts, 155 U. S. 461, that 'in conferring upon congress the regulation of commerce, it was never intended to cut the states off from legislation on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it, within the meaning of the Constitution, * * * and it may be said, generally, that tht legislation of a state, not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotedly affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce foreign or interstate, or in any other pursuit."

"It has never been supposed that the dominant power of congress over interstate commerce took from the states the power of legislation with respect to the instruments of such commerce, so far as the legislation was within its ordinary police powers. Nearly all the railways in the country have been constructed under state authority, and it cannot be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves necessarily the power to impose such regulations upon their operation as a sound regard for their interests of the public may seem to render desirable. In the division of authority with respect to interstate railways congress reserves to itself the superior right to control their com-

merce and forbid interference therewith; while to the states remains the power to create and to regulate the instruments of such commerce, so far as necessary to the conservation of the public interests.

If it be assumed that the states have no right to forbid the consolidation of competing lines, because the whole subject is within the control of congress, it would necessarily follow that congress would have the power to authorize such consolidation in defiance of state legislation—a proposition which only needs to be stated to demonstrate its unsoundness. As we have already said, the power of one railway corporation to purchase the stock and franchises of another must be conferred by express language to that effect in the charter, and hence, it will be conceded that it would have no power to make the proposed purchase in this case. As the power to purchase, then, is derivable from the state, the state may accompany it with such limitations as it may choose to impose. It results, then, from the argument of the appellant that, if there be any interference with interstate commerce it is in imposing limitations upon the exercise of a right which did not previously exist, and hence, if the state permits such purchase or consolidation, it is bound to extend the authority to every possible case, or expose itself to the charge of interfering with commerce. This proposition is obviously untenable.

While the constitutional power of the state in this particular has never been formally passed upon by this court, the power of state legislatures to impose this restriction upon the general authority to consolidate has been recognized in a number of cases. Railroad Co. v. Maryland, 21 Wall. 456, 470; Shields v. Ohio, 95 U. S. 319; Wallace v. Loomis, 97 U. S. 146, 154; New Buffalo v. Iron Co., 105 U. S. 73; Leavenworth v. Chicago &c. Railway, 134 U. S. 688, 699; Livingston County v. Portsmouth

Bank, 128 U. S. 102; Keokuk & Western Railroad v. Missouri, 152 U. S. 301; Ashley v. Ryan, 153 U. S. 436. In the last case it was broadly held that a state, in permitting railway companies to consolidate, might impose such conditions as it deemed proper, and that the acceptance of the franchise implied a submission to the conditions, without which it could not have been obtained.

The power to forbid such purchase or consolidation with competing lines has been directly upheld in a large number of cases in the state courts, in some of which cases a violation of the commerce clause was suggested, and in others it was not. Hafer v. Cincinnati, Hamilton & Dayton Railroad, 29 Wkly Law Bull. 68; State v. Atchison & Red River Railroad, 24 Nebraska,, 143; Gulf, Col. & Santa Fe Railway v. State, 72 Tex. 404; East Line &c Railway v. Rushing, 69 Texas, 306; Pennsylvania v. Commonwealth, 7 Atl. Rep. 368; Montgomery's Appeal, 136 Penn. St. 96; Currier v. Concord Railroad, 48 N. H. 321; Texas & Pacific Railway Co. v. Southern Pacific Railway Co., 41 La. Ann. 970. See also Langdon v. Branch, 37 Fed. Rep. 449; Hamilton v. Savannah &c Railroad, 49 Fed. Rep. 412; Clark v. Central Railroad, 50 Fed. Rep. 338; Kimball v. Atchison, Topeka &c Railroad Co., 46 Fed. Rep. 888."

XIII.

THE ACQUISITION BY THE NORTHERN SECURITIES COMPANY OF THE MAJORITY OF THE CAPITAL STOCK OF THE RAILROAD COMPANIES IN QUESTION, CREATED A COMMON LAW MONOPOLY IN RAILROAD PROPERTIES AND TRAFFIC IN THE NORTHERN HALF OF MINNESOTA, WNICH IS NOT ONLY A VIOLATION OF THE STATUTORY ENACTMENTS, AS WE HAVE URGED, BUT OF THE COMMON LAW OF THE STATE, AND WHEN CONSUMMATED IN NEW JERSEY TO TAKE EFFECT IN MINNESOTA, IS ALSO A VIOLATION OF THE FEDERAL CONSTITUTION.

In *United States v. Freight Association*, 166 U. S. 327-8, in determining that the Sherman act applied to railroad traffic and prohibited all contracts in restraint of trade, or *which empowered an Association to restrain trade or commerce*, whether such restraints were reasonable or unreasonable, this Court said:

> "Contracts in restraint of trade have been known and spoken of for hundreds of years, both in England and in this country, and the term includes all kinds of those contracts which in fact restrain or may restrain trade."

It was stated that all contracts in unreasonable restraint of trade were void at common law.

It will be conceded that by an unbroken line of authorities it is settled, that monopolies in restraint of trade, not authorized by statute, are illegal at

common law, independent of statutory or constitutional prohibition.

This is the rule adopted in Minnesota and it has been held by the highest court in that State to apply to traffic arrangements entered into by railroads and to railroad properties.

Stewart v. Erie & Western Transportation Co., et al., 17 Minn. (Gil. 348) 372.

In the case at bar the stockholders (i. e., the owners) of two competing railway companies created a device by means of which they blended their capital stock, and each obtained a mutual interest in the property of competitors. The Great Northern stockholders became joint owners in essence of the Northern Pacific Railway and *vice versa*. Each stockholder in substance traded a part of his holding by means of a plausibly constructed device, with a net result that by blending the properties the motive for competition ceased and competition was absolutely stricken down. We submit, the striking down of competition—1, created a monopoly; and 2, was an act restraining trade and commerce.

Among the mutiplicity of authorities discussing the general question attention is called to *Bishop v. American Preservers Co.*, 157 Ill. 284, in which the court held that "an agreement providing for the welding together of all the interests engaged in a certain business into one giant combination or partnership, under the absolute dominion and control of a board of trustees, is void, as contrary to public policy."

Attention is also called to the case of *Attorney General v. Great Northern Ry. Co. of England*, reported in 1st Drewry & Smales Chancery Reports, 154. It appears the railway company had in a crafty manner entered into the business of selling coal and established a monopoly therein. The court upon the ground that a practical monopoly existed and that an absolute one could readily be perfected, enjoined the railway company from dealing in coal at all. The decision was placed upon the ground that monopolies were against sound public policy.

An examination of complainant's Exhibit Number 9, being a railroad map of the State of Minnesota, Folio 3197, will show at a glance that the consolidation of substantially all of the capital stock of the Northern Pacific and Great Northern Railway Companies in the hands of the Northern Securities Company will create an absolute monopoly in railway traffic in the northern half of Minnesota, except upon the iron ranges in the extreme northeast corner of the State.

In 1895 the effect of the practical consolidation of the Northern Pacific and Great Northern Railway Companies was under consideration in this court, and in deciding the question it was said:

> "The consolidation of these two great corporations will unavoidably result in giving to the defendant a monopoly of all traffic in the northern half of the State of Minnesota, as well as of all transcontinental traffic north of the line of the Union Pacific, against which public regulations will be but a feeble protection. The acts of the Minnesota Legislature of 1874 and 1881 undoubtedly reflected the general sen-

timent of the public that their best security is in competition."

Pearsall v. Great Northern Ry. Co., 161 U. S. 677.

Since 1895 an additional through line has been constructed by the Great Northern and many spur lines have been built by both companies in northern Minnesota. Therefore a monopoly in railway traffic is far more extended and complete now than then, and it is submitted:

1st, that a practical consolidation of the Great Northern and Northern Pacific Railway Companies has been perfected in the Northern Securities Company by the consolidation of substantially all of their capital stock therein. 2nd, that this blending of stock was the result of the mutual acts of the stockholders of the company. 3rd, That the purpose and design of the incorporators of the Northern Securities Company in creating it, as shown by the evidence of Mr. Baker, Mr. Thorn and Mr. Kennedy, was to strike down competition between the Great Northern and Northern Pacific Railway Companies. In other words, to put the stock in single hands where it would be perpetually held, as they graphically said, where the stockholders of the respective companies would not fight one another. 4th, The injurious affect resulting from the striking down of competition is already apparent and abundantly appears from the evidence of Mr. Addison Leach, Mr. O. C. Beck, Mr. Frank E. Weld and

Mr. E. Weideman, offered on behalf of the complainant.

We submit not only that an unreasonable restraint upon trade and commerce within but that a monopoly in railways and railway traffic in the State of Minnesota has been affected, and that beyond cavil Chapter 359 of the laws of 1899 (heretofore brought to the attention of the court, which prohibited the making of all contracts or arrangements in restraint, or vested in any one *the power* to restrain trade, whether such restraint be a reasonable or unreasonable one, was intended to be, and has been, violated.

Independent of the contractual relation existing between the Northern Securities Company, as a stockholder of the Great Northern Railway Company, and the State of Minnesota, which obligated the former to obey the laws of the latter (Pinney v. Nelson, 183 U. S. 144), we submit that all acts of the stockholders of said railway company performed in New Jersey affecting property rights in Minnesota, done for the purpose of offending and resulting in a violation of, the laws of the State of Minnesota, may be checked by injunctional proceedings. If this be not so, a conspiracy formed in one State to be executed in another, and which operates to violate its laws may go unchecked. Any plan to violate the policy of one State, no matter how grave, may be executed in another; a battery of heavy artillery may be planted in the State of Wisconsin, and its managers, unless checked, easily destroy millions of dollars of real property in Min-

nesota. In such a case, independent of interference by the government, does any one urge that the courts are powerless to protect property interests? If so, the scheme of government established by the framers of the Federal Constitution is in a degree a failure, and the "more perfect union" referred to in the preamble of the Constitution, fails of accomplishment.

It is submitted that Section 1 of Article IV of the Constitution, providing that "full faith and credit shall be given *in each State* to the public acts, records and judicial proceedings of every other State," must be construed as something more than a clause having reference to the exemplification of records.

XIV.

MONOPOLIES IN, AND ALL ATTEMPTS TO MONOPOLIZE, TRADE OR COMMERCE AMONG THE SEVERAL STATES, ARE PROHIBITED BY THE FEDERAL ANTI-TRUST ACT.

We have elsewhere herein attempted to sustain the proposition by authority, that the State of Minnesota in its individual capacity may invoke the acts of Congress of the United States for the protection of its proprietary interests in property against irreparable injury. It abundantly appears from the record that the State is the owner of a large number of state institutions situated at junction points on the Great Northern and Northern Pacific lines of railway, and annually purchases large amounts of supplies both at points within and without the State of Minnesota, and is interested in the preservation of competition between railway carriers of both state and interstate traffic. It also appears from the record that the State is the owner of hundreds of thousands of acres of land contiguous to these lines of railway, which according to the evidence of W. P. Christenson (Fols. 2942 to 2950) and George A. Flynn (Fols. 57 to 74) will be lessened in value by the striking down of competition between such railway companies.

Attention is called to Par. 2 of Article VI of the Federal Constitution which reads:

"This constitution and the laws of the United

> States which shall be made in pursuance thereof, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

This section read in connection with the commerce clause makes more pertinent the question as to the force and effect of Section 2 of the Act of Congress of 1890, known as the Anti-trust Act, which reads:

> "Every person who shall monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor. * * *"

What has been urged in the preceding paragraph with reference to the creation of a monopoly in railway traffic in Minnesota, applies with equal force to interstate traffic carried on by these railroad companies, as well as to the railroad companies themselves which are the instrumentalities of such commerce.

We submit: 1st, That the acts of the Northern Securities Company and its promoters in pooling the capital stock of the Northern Pacific and Great Northern Railway Companies in single hands, offends the section of the Act of Congress above quoted, by the creation of a monopoly in both interstate traffic and the instrumentalities engaged in carrying on commerce among the several states. 2nd, That the device itself, to-wit: a holding company, created for the purpose of carrying out the plan of its pro-

moters in the manner established in the record, also tends to the creation of a monopoly and is an unlawful creation.

By this plan fifty-one per cent of the capital stock of the Great Northern and fifty-one per cent of the capital stock of the Northern Pacific Railway Companies, in the hands of the Northern Securities Company, may control the destinies of both companies. The owners of practically one-half of the capital stock of these railway companies by the use of such a device as the Northern Securities Company, may, after the exchange of their stock for one hundred per cent of its capital stock, incidentally place upon the market and sell forty-nine per cent of such stock; and the same individuals by the creation of a Southern Securities Company and in turn, an Eastern Securities and an English Securities Company, may go on diluting their actual holdings until one or two per cent of the actual value of fifty-one per cent of the capital stock of the Great Northern and Northern Pacific Railway Companies, may dominate the English, Eastern, Southern, and Northern Securities Companies respectively.

Can it be urged that a plan which permits this is not in itself vicious and unlawful as tending to create a monopoly?

XV.

IT IS CLAIMED BY COUNSEL FOR APPELLEES THAT CHAPTER 86 OF THE LAWS OF 1903 OF APPELLANT AMOUNTS TO A LEGISLATIVE CONSTRUCTION OF THE ANTI-CONSOLIDATION ACTS OF 1874 AND 1881, AND SHOWS THAT THE LEGISLATIVE BODY OF APPELLANT DID NOT CONSIDER THAT SAID ACTS PROHIBITED A CONSOLIDATION BY THE STOCKHOLDERS OF A RAILROAD CORPORATION ACTING AS SUCH. THE ACT OF 1903 READS AS FOLLOWS:

> "Section 1. The consolidation of the capital stock, lines, property, franchises, control, or the power of control, of two or more parallel and competing lines of railroad in the hands of any corporation, trustee, agent or representative of any corporation, wheresoever situated, is hereby prohibited and made unlawful.
>
> "Sec. 2. This act shall take effect and be in force from and after its passage."

This act was passed in the spring of 1903, after the State had instituted these proceedings against the appellees. Statements were being made in the public press that some other means or device would be resorted to in order to accomplish the results desired by the promotors of the Northern Securities Company, in case they were defeated in these proceedings; and this act presumably was passed by the legislature as an additional precautionary measure. At that time the Attorney General, acting under the request embodied in a resolution of the State Senate, had under consideration the alleged consol-

idation of the Iron Range railroads of Northeastern Minnesota.

It was found, as appears from the report of the Attorney General to the Senate that the capital stock of one of these railroad companies was lawfully vested in the Minnesota Iron Company; that the capital stock of the other was lawfully owned by the Consolidated Mines Company, a New Jersey corporation, the stock of which was owned by the United States Steel Company. While in turn the stock of the Minnesota Iron Company was owned by the Federal Steel Company, the capital stock of which had been purchased by the United States Steel Company.

Thus the United States Steel Company, by the acquisition of the capital stock, at remote periods, of time, *of two manufacturing companies*, and without owning the capital stock of, and without corporate action by any railway company, still became possessed of the *power of control* of two competing railway lines. To prohibit a recurrence of such an act, the statute under consideration was passed.

It can in no way be claimed as a legislative interpretation of the then existing laws. The word *"stockholder"* is no where used in the act.

In construing what force or effect should be given to any claimed legislative interpretation of an existing law, the Court in *Rural Independent School District No. 10 v. New Independent School District of Kelly, et al.*, 94 N. W. Rep., quoting from page 286, said:

"Since the proceedings involved in this case were commenced, the Legislature has amended Code, § 2794, so as to make it directly applicable to such a case as the one now before us (29 Gen. Assem. p. 77, c. 126) and counsel for plaintiff contends that this legislative recognition of the necessity for an amendment in order to cover such a case is an admission that previously the statute did not cover the case. We need not, however, assume to be so ignorant of the methods of legislation as to profess not to know that a statute may be insufficient in its language to carry out the legislative intent, and that when difficulties arise in its interpretation, the Legislature is likely to change the language so as to make its application clear in other cases, even though the amendment could not be effective as to the case in which the difficulty has arisen. It is quite as likely that the language of the amendment was intended to make the statute correspond to what had previously been supposed or assumed to be the law as that it was thereby intended to change the general intent and purpose of the law."

The Supreme Court of appellant, in passing upon this same question in *Bingham v. Supervisors of Winona Co.*, 8 Minn. 397, said:

"It is further urged by appellant, that the legislature itself has given a construction to the section under which these fees are claimed, and which he deems conclusive of the question. * * *

If the repeal of the statute named is to be regarded as a construction of that legislature, to the effect that the statute was then in force, and that by virtue of it the treasurer was entitled to the fee therein named, this fact could by no means have the conclusive effect claimed for it by appellant. It is only the intent of the legislature which enacts a statute that is to

govern courts in the construction thereof. The opinion of a subsequent legislature upon the meaning of a statute is entitled to no more weight than that of the same men in a private capacity. (7 Johns. 508). But it is by no means certain that the legislature of 1860 placed this construction on the statute. It is at most only an implication from the fact of repealing the same, a thing which the legislature might well have done in view of claims asserted under it, even were it believed that such claims were unauthorized by it. An argument or inference of this nature must be quite unsatisfactory to a court in determining the true construction of the statute."

In the case of *Larned v. City of Syracuse*, 44 N. Y. Supplement, page 856, the Court said:

"It is urged that the legislative construction, by Chapter 950 of the laws of 1895, of sections 155 and 156, as they existed when this action arose, controls the rights of these litigants, and is binding on the courts. The constitution of this state vests all judicial powers in the courts, and none in the legislature; and the latter is without power, under the constitution, to enact that pre-existing statutes shall be construed so as to affect causes of action then existing or actions then pending, as prescribed by the subsequent and declaratory act. (Citing a large number of cases). The amendments to sections 155 and 156 made by chapter 950 of the laws of 1895 have no effect on this litigation" and are entitled to no weight by this court.

XVI.

If it should be claimed by appellees in this Court, as it was in the Court below, that Chapter 229 of the laws of appellant for the year 1899 is an adoption of the language used by this Court in the case of *Pearsall v. The Great Northern Railway Company*, we call the Court's attention to the following:

An inspection of the law of 1899 shows that it is an amendment of the law of 1881 only to the extent of permitting foreign corporations to do what domestic corporations were authorized to do under the latter act; and evidently out of precaution, the legislature incorporated into the act of 1899 the same exceptions as those contained in the act of 1881, so that there could be no chance of any claim, being made by a foreign corporation that it possessed powers other than those possessed by a domestic corporation. Nothing appears from the act to show that it was an adoption or ratification of the language used in the Pearsall case, and from which so much is claimed by the appellees. This Court did not have before it for decision in the Pearsall case, any of the questions presented in this action, nor was such a construction given to the statute of either 1874 or 1881 as would justify a claim at this time that in the passage of the act of 1899, such a construction was accepted and approved.

The one prominent fact in the Pearsall case known to the public generally in the State of Minnesota, was that the attempted consolidation of the

two railway companies had been prevented by that decision. No legislative body would have examined that case for the purpose of finding whether or not any language was used by way of illustration or otherwise, which would justify the claims now made by appellees. In fact we contend at the present time, and it seems to us correctly, that the language used in the Pearsall case does not justify or approve the consolidation of these two railway companies under the present scheme or device.

The cases to which we have already called the Court's attention on legislative interpretation in the preceding subdivision are equally applicable to this question, and we refer the Court to those cases in considering this proposition.

XVII.

THE APPELLANT CAN MAINTAIN THIS ACTION IN ITS INDIVIDUAL CAPACITY AND ALSO IN ITS SOVEREIGN CAPACITY AS *parens patriae*.

It is alleged in the bill of complaint, and admitted by the answers, that the appellant is the owner of a large amount of lands, and also trustee for another large portion of lands set aside for school purposes; which lands are located along, or near the lines of railway of the Great Northern and Northern Pacific Railway Companies in Minnesota; also that the appellant is the owner of, and maintains a large number of charitable institutions, and is a large shipper of freight to said institutions, a number of which are reached only by the lines of the Great Northern and Northern Pacific Railway Companies.

From the testimony it appears that these lands will be more valuable with two competing railroads reaching them than when reached by only one or two roads under a single ownership. (See Fols. 2920 to 2962 of the record; also Fols. 56 to 103 of the record, and Exhibits 1 to 6 inclusive, found at Fols. 2975 to 3026 of the record).

Such being the case it has been held by this Court that such an action as this can be maintained.

See *Pennsylvania v. Wheeling Bridge Co.*, 9 Howard 647.

Same case, 11 Howard, 528.

Same case, 13 Howard, 518.

Same case, 18 Howard, 421.

Louisville & Nashville Ry. Co. v. Kentucky, 161 U. S. 677.

Also *Penn. Ry. Co. v. Commonwealth*, 7 Atlantic Rep. 371.

State v. Standard Oil Co., 30 N. E. Rep. 279.

Trust Co. of Georgia v. State of Georgia, 48 L. R. A. 520, where Court said:

> "Our conclusion, therefore, both from reason and a decided weight of authority, is that the State in its sovereign capacity can appeal to the courts for relief by injunction whenever either her property is involved, or the public interests are threatened and jeopardized by any corporation, especially one of a public nature like a railroad company seeking to transcend its powers and to violate the public policy of the State."

If it should be contended by counsel for the defendants that the State can not maintain this suit in its capacity as *parens patriae*, or for the benefit and protection of all the citizens of the State, then we call the Court's attention to the case of *Missouri v. Illinois & Chicago District*, 180 U. S. 241, where this Court said:

> "An inspection of the bill discloses that the nature of the injury complained of is such that an adequate remedy can only be found in this court at the suit of the State of Missouri. It is true that no question of boundary is involved, nor of direct property rights belonging to the complainant State. But it must surely be concluded that, if the health and comfort of the inhabitants of a State are threatened, the State is the proper party to represent and de-

fend them. If Missouri were an independent and sovereign State all must admit that she could seek a remedy by negotiation, and, that failing, by force. Diplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that upon the latter would be devolved the duty of providing a remedy and that remedy, we think, is found in the constitutional provisions we are considering.

"The allegations of the bill plainly present such a case. The health and comfort of the large communities inhabiting those parts of the State situated on the Missisippi River are not alone concerned, but contagious and typhodal diseases introduced in the river communities may spread themselves throughout the territory of the State. Moreover substantial impairment of the health and prosperity of the towns and cities of the State situated on the Mississippi River, including its commercial metropolis, would injuriously affect the entire State.

"That suits brought by individuals, each for personal injuries, threatened or received, would be wholly inadequate and disproportionate remedies, requires no argument."

Also in Re Debs, 158 U. S. 564, where the Court said:

"That while it is not the province of the Government to interfere in any mere matter of private controversy between individuals, or to use its great powers to enforce the rights of one against another, yet whenever the wrongs complained of are such as affect the public at large, and are in respect of matters which by the Constitution are entrusted to the care of the nation, and concerning which the nation owes its duty to all the citizens of securing to them their common rights, then the mere fact that the Government has no pecuniary inter-

est in the controversy is not sufficient to exclude it from the courts or prevent it from taking measures therein to fully discharge those constitutional duties."

Also the case of Kansas v. Colorado, 185 U. S. 142, where the Court said:

> "As will be perceived, the court there rules that the mere fact that a State has no pecuniary interest in the controversy, would not defeat the original jurisdiction of this court, which might be invoked by the State as *parens patriae*, trustee, guardian or representative of all or a considerable portion of its citizens; and that the threatened pollution of the waters of a river flowing between States, under the authority of one of them, thereby putting the health and comfort of the citizens of the other in jeopardy, presented a cause of action justifiable under the Constitution."

See also L. & N. Ry. Co. v. Kentucky, supra.

State v. Ohio State Oil Co., 47 L. R. A. 630.

The magnitude and importance of this action is self evident from the issues framed and evidence submitted. The judgment of this court thereon must determine whether a sovereign state of this Union is powerless to vindicate the majesty of its own laws.

The fact that these two Railway Companies have been consolidated in and a perpetual control secured by a single corporation is not disproved by a word of testimony in this case. The only defense interposed, is a plea that such consolidation was

necessary in order to preserve the united control that Mr. Hill and Mr. Morgan and their associates most urgently desire, followed by a declaration of good intentions on their part, framed in alluring visions of benefits they intend to bestow upon this and other states. The appellees seem to think this excuse and painted vision a justification for the flagrant violation of the laws of this and other states. The Court must bear in mind that seven states are practically dependent upon the railroads controlled by the Northern Securities Company, for their transportation facilities; and that these seven states embrace nearly one-twelfth of the area of the United States and contain within their borders nearly one-tenth of the total population of the United States. While it is not a part of the duty of the State of Minnesota to enforce the rights of the citizens of any other state, and it does not seek to do so, we call the Court's attention to these facts only to show that these other states, as well as Minnesota, will be powerless to protect themselves against this monopoly if relief is denied in this action. If what is attempted to be done by those appellees can be successfully accomplished, the States of this Union are powerless to enforce their remedial statutes, and corporate instrumentalities created by them, become more powerful than their creator.

Under the constitution, the national government is powerless to aid a state in regulating and controlling its own corporations; and the judgment of the court in this action, in its final application,

will determine whether a state, having adopted the constitution and entered the Union, is also powerless to esforce its constitutional enactments for the regulation of corporations created by it; and whether a corporation created by another state can be used as a means for evading and violating such enactments.

W. B. DOUGLAS,
Attorney General.

M. D. MUNN,
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Of Counsel.

JAN 12 1904
Clerk.

Supreme Court of the United States

OCTOBER TERM, 1903.

No. 438.

STATE OF MINNESOTA, APPELLANT,

vs.

THE NORTHERN SECURITIES COMPANY ET AL.

ADDITIONAL AUTHORITIES OF APPELLANT IN OPPOSITION TO MOTION TO DISMISS APPEAL.

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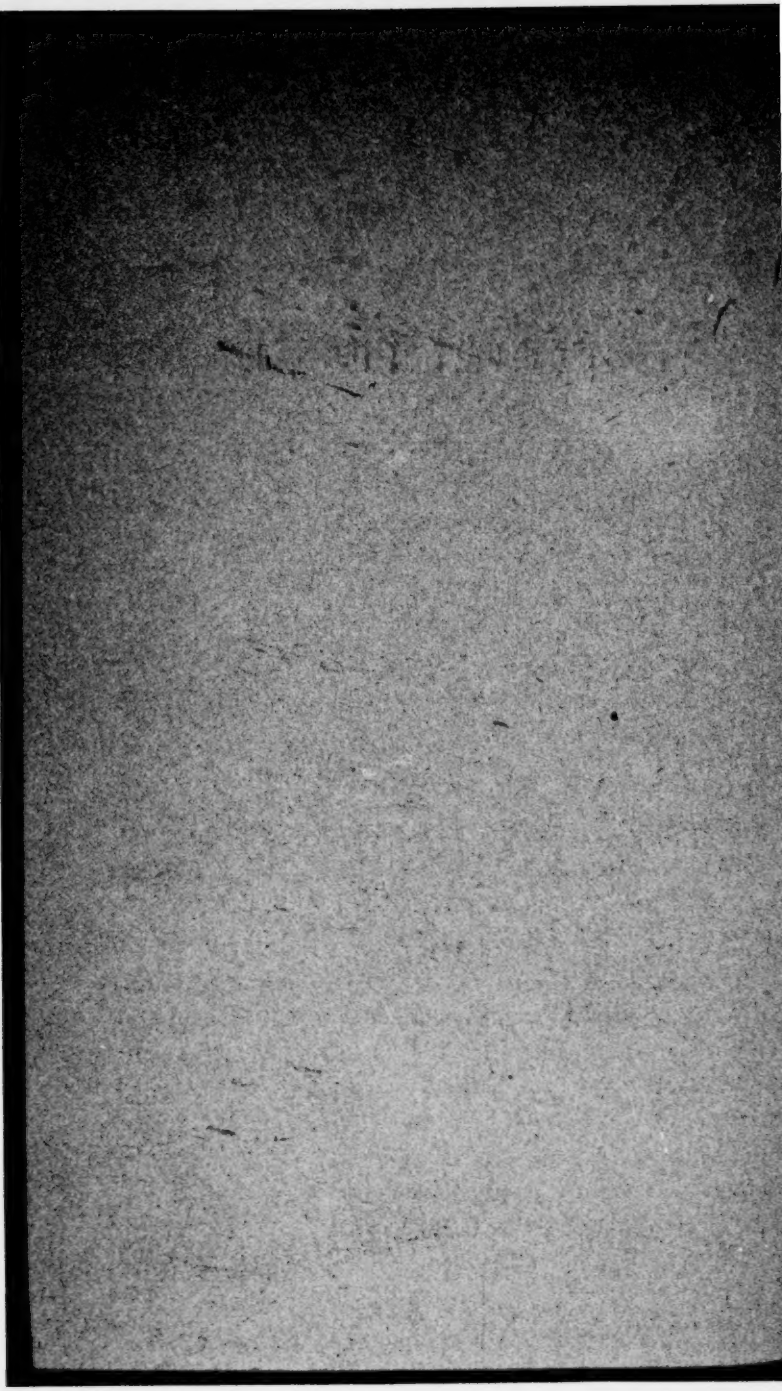

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 433.

STATE OF MINNESOTA, APPELLANT,

vs.

THE NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, ET AL., APPELLEES.

ADDITIONAL AUTHORITIES OF APPELLANT IN OPPOSITION TO MOTION TO DISMISS APPEAL.

It is not necessary that the court below should have decided the constitutional questions relied upon by complainant, or claimed by appellee, in order to give right of appeal to this court under the judiciary act of 1891. (See Erie *vs.* Purdy, 185 U. S., 148; Holder *vs.* Aultman, 169 U. S., 88; Detroit Railway Company *vs.* Aultman, 189 U. S., 386; Minneapolis and St. Louis Railway Company *vs.* Gardner, 177 U. S., 340.)

Reference to the following historical facts shows that the framers of the Constitution intended by article IV that in each State full faith and credit should be given to the laws of the other States.

1.

Article IV of the original Articles of Confederation contained the following: "Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State."

2.

Article XVI of the draft of the Constitution reported to the Convention by the Committee of Five on August 6, 1787, reads as follows: "Full faith shall be given in each State to the acts of the legislature and to the records and judicial proceedings of the courts and magistrates of every other State." (See page 123, volume IV, Elliot's Debates.)

In Convention, on August 29, Mr. Williamson moved to substitute for article XVI the language used in article IV of the Articles of Confederation, and said that he did not fully understand the meaning of article XVI as reported by the committee. Mr. Pinckney moved to commit article XVI to the committee.

Mr. Randolph moved the following proposition as a substitute, and asked that it be also committed: "Whenever the act of any State, whether legislative, executive, or judicial, shall be attested and exemplified under the seal thereof, such attestation and exemplification shall be deemed in

other States as full proof of the existence of that act, *and its operation shall be binding in every other State in all cases to which it may relate and which are within the cognizance and jurisdiction of the State wherein the said act was done.*" This was committed with article XVI.

Mr. Morris moved to commit the following proposition on the same subject; which was done: "Full faith ought to be given in each State to the public acts, records and judicial proceedings of every other State, and the legislature shall, by general laws, determine the proof and effect of such acts, records and proceedings." (See pages 487 and 488, volume V, Elliot's Debates.)

3.

On September 1 the committee to which was referred all of the foregoing reported the following as a substitute for article XVI, as originally submitted: "Full faith and credit *ought* to be given in each State to the public acts, records and judicial proceedings of every other State, and the 'legislature' *shall*, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved and the effect which judgments obtained in one State shall have in another."

4.

On September 3, on motion, the words "judgments obtained in one State shall have in another" were stricken out and the word "thereof" inserted. The words "ought to," in

the first line, were, on motion, changed to "shall," and the word "shall" between "legislature" and "by general law" was, on motion, changed to "may." (See page 504, volume V, Elliot's Debates.)

The revised draft of the Constitution, as finally reported to the Convention, substituted for the word "legislature" the word "Congress."

Congress has provided that the acts of the legislature of any State or Territory or of any country subject to the jurisdiction of the United States shall be authenticated by having the seal of such State or Territory or country affixed thereto. (Sec. 905, Revised Stat. of U. S., 2d edition.)

At the time this article of the Constitution was drafted the States had the right, in case any of their laws were violated or disregarded by any other State, or the citizens of any other State, to negotiate for recognition and enforcement of the same. Failing in this, such State had the right to compel, by force if necessary, recognition of and respect for its laws. (See Missouri *vs.* Illinois, 180 U. S., 241.)

The more perfect union sought to be accomplished by the framers of the Constitution would fail, if after its adoption and the surrender by the States of the right above referred to, any other State or the citizens thereof could violate the laws of a sister State in so far as they relate to property situated within the State and were valid under the Constitution. The question of priority of action could not arise because each State, after adopting the Constitution, could only legislate relating to property, property rights within the State, and relating to the rights or obligations of citizens of the State. It seems to us that the intention of the framers

of the Constitution was to prevent a violation of such legislation by any person or by any State or the citizens thereof, acting outside the territorial limits of the State whose laws were sought to be avoided or violated.

Respectfully submitted.

W. B. DOUGLAS,
M. D. MUNN,
GEO. P. WILSON,
Counsel for Appellant.

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Clerk

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1903.

No. 433

STATE OF MINNESOTA,

Appellant,

vs.

THE NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, ET AL.,

Appellees.

APPELLANT'S BRIEF ON REMOVAL TO AND JURISDICTION OF CIRCUIT COURT.

M. D. MUNN,
GEO. P. WILSON,
Of Counsel.

W. B. DOUGLAS,
Attorney General.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1903.

STATE OF MINNESOTA,

Appellant,

vs.

THE NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY, et al.,

Appellees.

SUPPLEMENTAL BRIEF MADE PURSUANT TO THE ORDER OF THE COURT, ON THE QUESTION WHETHER THE CIRCUIT COURT OF THE UNITED STATES OF THE DISTRICT OF MINNESOTA PROPERLY TOOK JURISDICTION OF THE CASE ON ITS REMOVAL THERETO.

I.

Record.

This action was removed from the District Court of Ramsey County, Minnesota, on the joint petition of all the defendants, upon the ground that the action arose under the Constitution and laws of the United States, and that the right upon which it was based and on which a recovery by plaintiff depended, would be defeated by one construction of the Constitution or said laws, and sustained by an opposite construction.

Divers citizenship did not form a basis for such removal, and under the rule settled in *Postal Telegraph Cable Co. vs. Alabama,*

155 U. S. 482, could not rightfully be presented as a ground therefor. The material portion of such petition for removal, is as follows:

"That this action arises under the Constitution and laws of the United States and more especially under the eighth section of the first article of the Constitution and the fourteenth amendment thereto, and the act of Congress entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' approved July 2, 1890, and that the title and right on which the said action depends and is based, and on which a recovery by plaintiff depends, will be defeated by one construction of the Constitution or said law, and sustained by an opposite construction, in this:

That said complaint alleges a combination among the defendants for the purpose of monopolizing, and which, as is alleged does monopolize commerce among the States of the Union, as well as within the State of Minnesota, and sets forth the provisions of a statute of said State which forbids every contract or combination in restraint of trade or commerce between any of the people of said State and any of the people of any other state or country, and which prohibits and declares unlawful any union or combination to which a corporation of said State is a party, the purposes or effect of which is to control or monopolize in any manner, the trade or commerce, or any part thereof, of the several states.

And the complaint among the states have been effected by the defendants in violation of said State statute, and also in violation of said Act of Congress of July 2, 1890.

And the complaint prays that it be adjudged that the said combination and agreement and all acts done and to be done thereunder are in violation of said State statute and said act of Congress and that plaintiff may thereupon, and because of such adjudged violation, have the relief specially prayed and also general relief."

(Record, 47-8a)

Appellant in its bill of complaint (Par. 10, Rec. 22-24a) alleged that appellees by the acts complained of violated three enactments

of the Legislature of the State of Minnesota, two of which, so far as material, are as follows:

> Sec. 1, Chap. 29, G. L. 1874. "No railroad corporation, or lessees, purchasers, or managers of any railroad corporation, shall consolidate the stock, property or franchise of such corporation with, or lease or purchase the works or franchise of, or in any way control any other railroad corporation owning or having under its control, a parallel or competing line, * * * "
>
> Sec. 1, Chap. 359, G. L. 1899. "Any contract, agreement, arrangement or conspiracy or any combination in the form of a trust or otherwise, heretofore entered into, which is in restraint of trade or commerce within the State, or in restraint of trade or commerce between any people of this State and *any of the people of any other state or country,* * * * is hereby prohibited and declared to be unlawful. * * * Or in case the purpose or effect of such union or combination is to control or monopolize in any manner the trade or commerce of any part thereof, of this state or the several states, such union, combination, agreement, arrangement or contract is hereby prohibited and declared to be unlawful."

Appellant at the end of paragraph 11 of its bill of complaint (Record 26a) alleged, that:

> "If said Northern Securities Company is allowed to hold and control the stock of said railroad company, and to carry out the purposes and object of its incorporators, as well as its own, full faith and credit will not be given to the public acts of this complaint, and it will be deprived of a further right guaranteed to it by the Constitution of the United States."

And in Parapraph 18 of its complaint (Record, 36a), further alleged, that by virtue of the acts of the defendant set forth and therein complained of—

> "A monopoly in railway traffic in Minnesota, as well as without said State, has been created, to the great, permanent and irreparable injury to the State of Minnesota and the people thereof, and in violation of its laws and of the laws of the

United States, in such case made and provided, viz.: 'An Act of Congress approved July 2, 1890, entitled An act to protect trade and commerce against unlawful restraints and monopolies.'"

II.

Jurisdictional and Removal Acts.

The Act of Congress of March 3, 1875, Chapter 137, as amended, defining the jurisdiction of the Circuit Court of the United States and regulating the removal of causes from the State courts thereto, so far as is material, is as follows:

Sec. 1. "That the Circuit Court of the United States shall have original cognizance, concurrent with the courts of the several states, of all suits of a civil nature, at common law or in equity, whether the matter in dispute exceeds, exclusive of interest and costs, the sum of two thousand dollars, and *arising under the Constitution or laws of the United States,* or treaties made, or which shall be made under their authority.* * * "

Sec. 2. "That any suit of a civil nature at law or in equity, *arising under the Constitution or laws of the United States* or treaties made or which shall be made under their authority, of which the Circuit Courts of the United States are given original jurisdiction by the preceding section, which may now be pending or which may hereafter be brought in any State court, may be removed by the defendant or defendants therein to the Circuit Court of the United States for the proper district, * * * "

III.

Additional Facts.

Prior to the removal of the cause to the Circuit Court of the United States, the president of the Northern Securities Company, upon whom a summons had been served while within the territorial boundaries of Minnesota, appeared specially by counsel and filed an

affidavit to the effect that said company was not the owner of any property situated within the State of Minnesoa, had not transacted, and did not contemplate doing, any business therein, and that it never had within said state any office, officer, place of business, or agent. (Record, 54-ea, fols. 227-230). (That the right to renew this motion is not abridged by the removal of the cause, see

Goldey vs. Morning News, 156 U. S. 518;
Wabash Western Ry. vs. Brow, 164 U. S. 271.

The motion to vacate the service of process upon the Northern Securities Company was thereafter withdrawn upon condition that appellant consent to have its cause tried in said Circuit Court, and on the further condition, which was assented to, that if the question of jurisdiction of the Circuit court of the United States over the subject matter of said action arose upon the motion of the court, and it was determined that such jurisdiction did not exist, the fact that this defendant had voluntarily appeared in the action and waived jurisdiction over its person, should not thereafter be urged or considered, and that such motion to vacate the service of process could thereafter be considered by the State Court of Minnesota the same as if such general appearance had never been entered in the Circuit Court.

The record shows that the Great Northern Co. amended its by-laws after the formation of the Northern Securities Co. so all stockholders' meetings could thereafter be held outside the limits of appellant, thus avoiding the necessity of the Northern Securities Company coming into Minnesota to vote its stock. (See folio 3630, page 911 of Record).

While it may be urged that nothing which occurred subsequent to the removal of this cause to the Circuit Court can fairly be considered as affecting, either directly or indirectly, the jurisdiction of the Circuit Court on the subject matter of the action, we also call

attention to the fact that each of the defendants in their respective answers thereafter filed, challenged the validity of the laws of the State of Minnesota pleaded in appellant's bill of complaint, as being in violation of the Constitution of the United States, and claimed, that they were "controlled and made of no effect by other legislation of the State of Minnesota and of the United States."

(See Answer of one of the Defendants—which is a duplicate of all—Record, page 82a, Par. 7.)

IV.

Argument.

Did the Circuit Court of the United States upon the above record, have jurisdiction over the subject matter of this action?

It is clear:

1st. That the Circuit Court has jurisdiction of all civil actions in part arising under or depending upon the construction of the Constitution or laws of the United States or treaties made therewith.

Section 2 of *the Removal Act, supra;*
Postal Tel. Cable Co. vs. Alabama, 155 U. S. 482;
Ames vs. Kansas, 111 U. S. 462.
Gold Washing and Water Co. vs. Keyes, 96 U. S. 203;
Shoshone Mining Co. vs. Rutter, 177 U. S. 507;
Cummings vs. Chicago, 188 U. S. 410.

Read in the light of Section 5 of the Court of Appeals Act—Chap. 517 of the Laws of 1891—it is equally clear that jurisdiction is assumed to exist in the Circuit Courts and an appeal authorized "in any case that involves the construction *or application* of the Constitution of the United States."

2nd. It is settled that the Supreme Court of the United States is without original jurisdiction of this controversy.

Minnesota vs. Northern Securities Co., 184 U. S. 199.

3rd. It is also equally clear, assuming the facts to be as stated in the affidavit of the President of the Northern Securities Co., above referred to, to the effect that the Northern Securities Company is not the owner of any property situated in Minnesota and never transacted any business therein, that the courts of Minnesota cannot acquire jurisdiction to hear and determine the issues involved herein, for the reason that jurisdiction over the person of the Northern Securities Company cannot be obtained.

Pennoyer vs. Neff, 95 U. S. 714;
St. Clair vs. Cox, 106 U. S. 350;
Goldey vs. Morning News, 156 U. S. 518;
Barrow Steamship Co. vs. Kane, 170 U. S. 100;
Cabanne vs. Graf, 87 Minn. 510.
Conley vs. Matheson Alkely Works, 190 U. S. 406.

4th. It was settled in the case of *Minnesota vs. Northern Securities Company, supra*, that the Northern Pacific and Great Northern Railway Companies are necessary parties with the Securities Company, and being residents of different states and not engaged in doing business in any single state, it follows that jurisdiction of the person of all the defendants cannot be obtained elsewhere than in this court, in which the Securities Company has voluntarily appeared.

Under the construction of the Federal Constitution which obtained in *California vs. Southern Pacific Ry. Co.*, 157 U. S. 270, and *Minnesota vs. Northern Securities Co., supra*, it follows as

prophesied by Mr. Justice Harlan and Mr. Justice Brewer in their dissenting opinion in *California vs. Southern Pacific Ry. Co.*, unless a Federal question is deemed to exist in this record which gives to the Circuit Court of the United States jurisdiction over the subject matter of the action, that under our dual form of government, a sovereign State will be deprived of the right to invoke the jurisdiction of any court in the land for the purpose of enforcing its laws or protecting its proprietary interests from unlawful acts done in violation of the laws of the State or Nation.

It is alleged in the bill of complaint and appears from the evidence, that the State of Minnesota is the owner of over three millions acres of land adjacent to the lines of railway involved, the value of which would be greatly reduced by the creation of a monopoly in railway traffic in northern Minnesota. It also appears that Minnesota, as a purchaser and shipper of supplies for its various institutions situated upon the lines of the Northern Pacific and Great Northern Railway Companies, is interested in the maintenance of competition betweenn such companies and will be irreparably injured by the striking down of competition between them. It is positively alleged in the complaint by appellant, that the acts of the defendants created a monopoly in railway traffic in northern Minnesota, was in restraint of trade and commerce, not only in Minnesota but between the different States, and constituted a violation of the anti-consolidation, as well as the anti-monopoly statutes of the State of Minnesota and the Federal anti-trust act.

Two Federal questions are clearly set forth in appellant's bill of complaint, which gave the Circuit Court of the United States jurisdiction over the subject matter of the action, and the Circuit Court was called upon to determine:

A. Whether the State to protect its proprietary interests had a cause of action against the defendants arising in part under the Federal Anti-Trust Act;

B. Whether the State anti-consolidation and anti-trust acts (rightly construed) had been violated. This presents a controversy between the appellant and the defendants, the correct determination of which involves or depends upon the construction and the *application* of the commerce clause as well as Article IV of the Constitution of the United States.

These questions may be considered in their order.

A.

Did the appellant fairly tender an issue of law and fact arising under or depending upon a correct construction of the Federal Anti-trust Act?

Supplemental to what we said in subdivision IX of our brief in this case we add the following:

For the purpose of this inquiry, we submit, it is immaterial how the question may be determined. The test is, whether the issue was fairly tendered. That it was so tendered and that a like issue has not been determined by this Court must be conceded.

An issue was tendered in which the appellant alleged the commission of certain acts by the defendants which were specifically asserted to be not only seriously injurious to its proprietary interest, but in violation of the Federal Anti-Trust Act. The appellant not only charged a violation of the act in paragraph 18 of its bill of complaint—record 37a—but the learned trial court in its decision *actually construed the act adversely* to one contention of appellant—Record 119a, fol. 473—and this construction rendered it unnecessary for the court to construe the act with reference to the other questions submitted. In this portion of the decree the court construed the act as excluding the appellant from invoking equity jurisdiction for its enforcement. Again, upon the argument in this court appellant's contentions upon both propositions were strenuously opposed by counsel for appellees.

It is therefore submitted that the pending controversy is one in part "arising under and depending upon the construction of the laws of the United States."

Ames vs. Kansas, 111 U. S. 462;
Postal Tel. Cable Co. vs. Alabama, 155 U. S., 482.
Gold Washing & Water Co. vs. Keys, 96 U. S. 203;
Shoshone Mining Co. vs. Rutter, 177 U. S. 507;
Cummings vs. Chicago, 188 U. S. 410;
Defiance Water Co. vs. Defiance, Oct. Term, 1903;
N. P. Ry. Co. vs. Townsend, 190 U. S. 270.

The test as to jurisdiction of the Circuit Court is clearly stated in the opinion of the court in *Gold Washing & Water Co. vs. Keyes, supra,* and affirmed in the case of *Shoshone Mining Co. vs. Rutter, supra,* (p. 507), as follows:

> *"A suit must, in part at least,* arise out of a controversy between the parties in regard to the operation and effect of the Constitution or *laws* upon the facts involved. * * * Before, therefore, a Circuit Court can be required to retain a cause under its jurisdiction, it must in some form appear upon the record by a statement of facts in legal and logical form, such as is required in good pleading, that the suit is one which 'really and substantially involves a dispute or controversy' as to a right which depends upon the construction or *effect* of the Constitution or some law or treaty of the United States."

In *Railroad Company vs. Mississippi,* 102 U. S. 141, this Court said:

> "That cases arising under the laws of the United States are such as grow out of the legislation of Congress, whether they constitute the right or privilege, or claim, or protection, or defence of the party, in whole or in part, by whom they are asserted; * * *

"That it is not sufficient to exclude the judicial power of the United States from a particular case, that it involves questions which do not at all depend on the Constitution or laws of the United States; but when a question to which the judicial power of the Union is extended by the Constitution forms an ingredient of the original cause, it is within the power of Congress to give the Circuit Courts jurisdiction of that cause, although other questions of fact or of law may be involved."

In the case of *Chapman vs. Goodnow*, 123 U. S. 540, this Court said, quoting from syllabus:

"If a Federal question is fairly presented by the record and its decision is necessary to the determination of the case, a judgment which rejects the claim, but avoids all reference to it, is as much against the right, within the meaning of Rev. Stat. §709, as if it had been specifically referred to, and the right directly refused."

Again, in the case of *Kaukauna Water Power Company vs. Green Bay and Mississippi Canal Company*, 142 U. S. 254, this Court said:

"This Court has had frequent occasion to hold that it is not always necessary that the Federal question should appear affirmatively on the record, or in the opinion, if an adjudication of such question were necessarily involved in the disposition of the case by the state court. *Wilson vs. Blackbird Creek Marsh Co.*, 2 Pet. 245; *Armstrong vs. Athens County*, 16 Pet. 281; *Chicago Life Insurance Co., vs. Needles*, 113 U. S. 574; *Eureka Lake Co. vs. Yuba County*, 116 U. S. 410."

Again, in the case of *O'Neil vs. Vermont*, 144 U. S. 323, this Court said:

"If that court could, by that assumption, bind this court, the supervising authority of our jurisdiction would be lost in every case by the simple assertion of the court below that it placed its decision on some particular ground of its own creation. To assent to any such doctrine would be to abrogate our jurisdiction in a most important particular. And that is, in my judgment, exactly what is done in this case. In the opinion of the

majority it is stated that the only question considered by the Supreme Court of Vermont, in regard to the present case, was whether the liquor in question was sold by O'Neil at Rutland or Whitehall, so as to fall within or without the statute of Vermont, and it arrived at the conclusion that the completed sale was at Vermont. That, says this Court, does not involve any Federal question. To this I answer, that before the state court could reach the question whether the sale fell under the law of Vermont it had to determine whether the sale was completed in that State, or in New York—whether, therefore, an executory sale of goods in New York, completed in Vermont, was or was not a transaction of interstate commerce, and until that question, which was a Federal one, was disposed of, the alleged State question could not be considered. But that the commercial question was brought to the attention of the Supreme Court of Vermont, was argued by counsel there and passed upon by that court, does not rest as an inference from the facts necessarily involved: It appears from its opinion and the official report of the case."

In *Northern Pacific Railway Company vs. Townsend* (supra), this court held that whenever a right is claimed under an Act of Congress, and the determination of such claim is dependent upon the nature and effect of such Act, its solution necessarily involves a Federal question.

Although strictly speaking, outside the present inquiry, upon the proposition that the trial court erred in its construction of the Federal Anti-trust Act, we suggest further, that while this act specifically authorizes the Attorney General of the United States to enforce it by injunctional proceedings, on behalf of and in the name of the United States, and it must be admitted that the State of Minnesota is without authority to do so, still attention is particularly called to Section 7 of this Act, which provides for the institution of an action by any individual to recover damages for private injuries suffered. Congress therefor contemplated not only the

enforcement of the Act by the National Government, but authorized private actions by individuals to recover damages for acts done in violation thereof. It is submitted that in all cases in which a right of action exists for damages, the same right of private action is preserved in equity to an individual, to enjoin the commission of an act which will cause grave injury of an irreparable nature, such as cannot be adequately compensated at law.

If this construction of the Act of Congress obtains in the application of the rule invoked, it is clear from the record that the state has suffered, and will continue from year to year to suffer, damages to its proprietary interests difficult, if not impossible, to measure, running into millions of dollars.

The rule is clearly stated by this Court in *Parker vs. W. L. C. & W. Co.*, 2nd Black 551, as follows:

> "A court of equity will interfere when the injury by the wrongful act of the adverse party will be irreparable, as where the loss of health, the loss of trade, the destruction of the means of subsistence, or the ruin of the property must ensue. 2 Swanst. 335; 16 Vesey, 342; 2 Ver. 646; 2 Bro. C. R. 64; 10 Vesey, 163; 6 Paige 83, Wat. Eden, 659, note.
>
> It will also give its aid to prevent oppressive and interminable litigation, or a multiplicity of suits, or where the injury is of such a nature that it cannot be adequately compensated by damage at law, or is such, as from its *continuance or permanent mischief*, must occasion a constantly recurring grievance, which cannot be prevented otherwise than by an injunction. Mitf. Eq. Pl. by Jeremy, 144, 145; Jer. Eq. 300; 1 Dick 163; 16 Ves. 342; 6 J. C. R. 46; 6 Paige, 83."

See also *Clark vs. Smith*, 13 How. 194; *Pennsylvania vs. Wheeling Bridge Co.*, 13 How. 518.

In *Pennsylvania vs. Wheeling Bridge Co.* (*supra*), this Court not only held that it had original jurisdiction over an action brought by the State of Pennsylvania, but enjoined the Wheeling Bridge Company from the construction of a bridge which, if built, would

have injured the State of Pennsylvania in its proprietary interests only a fractional part as seriously as the creation of a monopoly in railway traffic in Minnesota will affect the proprietary interests in that State.

In deciding the issues the Court used the following language:

> "If the bridge be such an obstruction to the navigation of the Ohio as to change, to any considerable extent, the line of transportation through Pennsylvania to the northern route through New York, or to a more southern route, an injury is done to the State of Pennsylvania as the principal proprietor of the lines of communication by canal and railroad, from Philadelphia to Pittsburg. And this injury is of a character for which an action at law could afford no adequate redress. It is of daily occurrence, and would require numerous, if not daily prosecutions, for the wrong done; and from the nature of that wrong, the compensation could not be measured or ascertained with any degree of precision. The effect would be, if not to reduce the tolls on these lines of transportation, to prevent their increase with the increasing business of the country."

Upon the proposition that a state may sue to redress injuries which are strictly analogous to those suffered by private individuals, see

United States vs. San Jacinto Tin Co., 125 U. S. 273;

United States vs. American Bell Telephone Co., 128 U. S. 315-317;

Missouri vs. Illinois, 180 U. S. 240;

Kansas vs. Colorado, 185 U. S. 125.

B.

The violation of the Minnesota anti-consolidation and anti-trust act, rightfully construed, involves, as applied to this controversy, the construction and the application of Article IV of the Federal Constitution, as well as the commerce clause.

Article IV as finally adopted, reads:

> "Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other state, * * "

Its history, which was presented in a former brief, may be found in—

4th *Elliott's Debates*, 123;

5th *Ditto*, 487-8, 504.

The gravemen of the charge in appellant's complaint is that the defendants created a corporate device in New Jersey and used it for the purpose and with the result that property rights in Minnesota were affected, in violation of its laws. Our contention is that Article IV must be so construed as to make the constitutional enactments of Minnesota effective throughout the United States, so far as they apply to and affect property rights within the State. Otherwise the policy and laws of any State may be easily evaded.

The various public acts of the legislature of Minnesota were pleaded in the bill of complaint and a violation charged,and we submit their scope under the Constitution, as well as their construction and effect, constituted one or more of the issues tendered by appellant. The complaint at the end of paragraph 11, also specifically charged a violation of rights guaranteed by Article IV. What the trial judge decided can have no bearing upon the jurisdiction of the court over the subject matter of the action. The test of jurisdiction must necessarily be determined by a correct answer to the question: What issues were fairly tendered for determination by the bill of complaint? If this be not the test the trial court by misconstruing a statute, has the power to eliminate from the record a jurisdictional question and deprive a party of the right of appeal.

The question of whether or not the case was properly removed from the state to the Federal Court, is in itself a Federal question.

See *Railroad Company vs. Koontz,* 104 U. S. 15.

The determination of this question in itself gives the right of appeal to this court direct.

The case having been appealed to this court, and this court, on its own motion, having questioned the correctness of the removal from the State to the Federal Court, that establishes the jurisdiction of this Court on appeal over the entire case should this court determine that the case was properly removed from the State to the Federal Court.

See, *Oakley vs. Goodnow,* 118 U. S. 44.
Scott vs. Goodnow, 165 U. S. 58.
Carter vs. Texas, 177 U. S. 442.

W. B. DOUGLAS,
Attorney General.

M. D. MUNN,
GEO. P. WILSON,
of Counsel.

FILE COPY. 30375

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1903. No. 433.

Office Supreme Court U.S.
FILED
OCT 30 1903
JAMES H. McKENNEY,
Clerk.

State of Minnesota, Appellant,

vs.

Northern Securities Company and others, Appellees.

SUGGESTIONS AGAINST MOTION TO ADVANCE THE APPEAL.

The appellees oppose the motion so to advance the hearing of this appeal that the same may be argued in connection with the case of Northern Securities Company *vs.* The United States, because (1) the legal questions involved are entirely different, and (2) such advancement would compel counsel at great inconvenience to prepare to argue an appeal which, because improperly taken, will upon motion be dismissed.

1. THE LEGAL QUESTIONS INVOLVED IN THE TWO APPEALS ARE DIFFERENT.

The United States case involves the interpretation of a law of the United States, known as the Sherman Act. The question thus raised is a Federal one, appropriately arguable and determinable in a cause in which the United States itself, represented by its Attorney-General, is a party. The discussion of this question cannot be aided by a simultaneous discussion of the question involved in the Minnesota case, namely, the proper interpretation of local statutes. It is true, that incidentally in this case, the State of Minnesota relies upon the Sherman Act; but the decision of what that Act means, in the suit brought by the United States, will finally settle that question. Nothing will be gained by its discussion in any other cause.

No advantage can accrue from a simultaneous argument of the various questions arising under the laws of Minnesota, with those arising under the Act of Congress, whilst counsel, by such simultaneous argument, will be embarrassed.

It is suggested by the appellant, that because of the voluminous Record, it will be advantageous to consider, at one time the large body of testimony, which it claims is the same in both cases. This claim is only partially true. A considerable amount of testimony, not taken in the Northern Securities case, appears in this Record. All the testimony, however, being largely cumulative, its examination and consideration will involve no great expenditure of time.

2. AN APPEAL SHOULD NOT BE ADVANCED FOR ARGUMENT ON THE MERITS, WHICH, UPON MOTION, MUST BE DISMISSED.

This appeal was taken on the twenty-fifth day of September, 1903. If counsel are compelled to argue it on the 14th of December, they will be much inconvenienced. Such inconvenience ought not perhaps to be regarded, if any great public advantage would result from an advancement of the appeal. No such advantage, however, will, or can, accrue.

The taking of the present appeal directly from the Circuit Court of Minnesota can be sustained only upon the ground that a question arising under the Constitution of the United States is by it raised. The record shows that the real controversy arises upon an assertion by the State of Minnesota: (1) that certain statutes of Minnesota have been violated by the appellees; (2) that by the appellees the Sherman Act has been violated.

The Circuit Court, in the opinion filed by Judge Lochren, decided three points:—

(*a.*) That the acts of defendants did not violate the statutes of Minnesota prohibiting consolidation of parallel railways.

(*b.*) That treating the State Anti-Trust Law as valid, it did not prohibit what had been done by defendants.

(*c.*) That the State of Minnesota could not proceed by injunction to compel an observance of the Act of Congress called the Anti-Trust Law.

Clearly, none of these rulings involves the interpretation or effect of the Constitution of the United States.

The direct appeal to this Court can be sustained, if at all, only under section 5 of the Act of March 3rd, 1891, which provides for such appeal:—

"In a case that involves the construction or application of the Constitution of the United States."

Under this Act the case must *involve* some question of the Constitution *really* and not imaginatively. While it is immaterial, unlike writs of error from the State courts, how the question was decided, still the rule applied in Sawyer *vs.* Piper, 189 U. S. 154, to such writs of error, viz., that the question must be a real, and not a fictitious one, is applicable to appeals and writs of error from the Circuit Courts. Otherwise any case could so be framed by an artful pleader that it could be brought direct to this court.

Under the Act of 1896 a *Federal* question merely is not sufficient to justify a direct appeal. It must be a question involving the Constitution of the United States. It is not material to inquire on what grounds the Circuit Court took jurisdiction. The question here is, not whether a judgment of the Circuit Court of Appeals would be final under section 6 of the Act of 1891, but whether, under section 5, a direct appeal can be taken from the Circuit Court to this court. Nor is it material that a constitutional question *might* have been raised by appellee had he been defeated below, or that, if some different decision had been made in the case, a constitutional question *might have become involved.* The decisions of this court settle that the constitutional question must be actually in the case; *i. e.*, must, in fact, have been decided by the lower court or have been necessarily involved in what was decided.

Ansbro *vs.* United States, 159 U. S., 695, 697;
Cornell *vs.* Green, 163 U. S., 75, 78;
Muse *vs.* Arlington Hotel Co., 168 U. S., 430, 435;
Western Union Telegraph Co. *vs.* Ann Arbor R. R. Co., 178 U. S., 239, 243;
Lampasas *vs.* Bell, 180 U. S., 276, 282.

No question, arising under the Constitution of the United States, appears in this record, unless it is to be found in an averment, added by way of amendment to the bill at the final argument of the cause, after the decision of the Circuit Court of the suit of The United States *vs.* Northern Securities Company, in these words:—

> "And if said Northern Securities Company is allowed "to hold and control the stocks of said Railway Compa- "nies and to carry out the purpose and object of its in- "corporators, as well as its own, full faith and credit will "not be given to the public acts of this complainant, and it "will be deprived of a further right guaranteed to it by "the Constitution of the United States."
>
> Vol. I. Record, page 26.

The only assignments of error which suggest a constitutional question are the twenty-sixth and twenty-seventh (Vol. 1 Record, page 131), reading as follows:—

> "(26.) The court erred in finding and holding that the "plan and purpose of organizing the Northern Securities "Company for the purpose and in the manner set forth "in complainant's complaint, and as shown by the testi- "mony; and the subsequent consummation of such plan "and purpose by the issuance and exchange of the stock "of the Northern Securities Company for a majority of "the stock of the Great Northern and Northern Pacific "Railway Companies, did not invade and violate the "rights guaranteed to the State of Minnesota under "Article IV. of the Constitution of the United States.
>
> "(27.) The court erred in finding and holding that the "formation of the Northern Securities Company under "the laws of the State of New Jersey for the purpose set "forth in complainant's complaint, and as shown by the "testimony; and the attempt of the incorporators of said "Northern Securities Company to avail themselves of the "sovereign power of New Jersey, delegated by said laws, "for the purpose set forth in complainant's complaint, "and as shown by the testimony, did not constitute a "violation of the right guaranteed to the State of Min- "nesota under said Article IV. of the Constitution of the "United States, which provides that full faith and credit "shall be given in each State to the public acts and "records of every other State."

It is only necessary to glance at the above-quoted averment of the bill and assignments of error, to see that no question arising under the Constitution of the United States is involved, and that there was no right to bring here, an appeal direct from the Circuit Court. It is too obvious for serious discussion, that the provision of the Constitution referred to by the appellant can, in no possible view, have aught to do with the case. Whatever ruling may be made or conclusion reached, no interpretation or application of that provision can become involved. As well might the appellant have referred at random to any other clause of the Constitution. The reference to the one arbitrarily selected, seems clearly to have been an effort of the pleader to create an artificial ground for a direct appeal to this court. If the effort proves successful, the efficiency of the Circuit Courts of Appeals in relieving this Court of an intolerable burden of legal work, will be at an end.

We submit, therefore, that as the appeal will be dismissed upon a motion to dismiss, which will be made without delay, but which, under the rules of this court, cannot be submitted until the thirtieth day of November, the only effect of making the order of advancement requested would be, to compel counsel, unnecessarily, to prepare, at great inconvenience, for an argument which will not be heard.

JOHN G. JOHNSON,
GEORGE B. YOUNG,
M. D. GROVER,
C. W. BUNN,

For Appellees.

FILE COPY. 30378

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 433.

Office Supreme Court U.
FILED
NOV 17 1903
JAMES H. McKENNEY,
Clerk

THE STATE OF MINNESOTA,
Appellant,

vs.

NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY AND JAMES J. HILL, AS PRESIDENT OF THE NORTHERN SECURITIES COMPANY, AND INDIVIDUALLY,
Appellees.

MOTION TO DISMISS APPEAL.

Now come the appellees above named and move the Court that the above entitled appeal, which is taken from a decree of the Circuit Court of the United States for the District of Minnesota, be dismissed for the reason that the same, having been taken directly to this Court, is not authorized by law.

JOHN G. JOHNSON,
GEO. B. YOUNG,
M. D. GROVER,
C. W. BUNN,
Counsel for Appellees.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 433.

THE STATE OF MINNESOTA,
Appellant.

vs.

NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY AND JAMES J. HILL, AS PRESIDENT OF THE NORTHERN SECURITIES COMPANY, AND INDIVIDUALLY,
Appellees.

NOTICE OF MOTION.

To W. B. Douglas, M. D. Munn and Geo. P. Wilson, Counsel for Appellant:

Gentlemen: You will please take notice that a motion of the appellees to dismiss the above entitled appeal (a copy of which motion and of the appellees' brief in support thereof is herewith served upon you), will be presented to the United States Supreme Court on Monday, November 30, 1903, at the opening of the court or as soon thereafter as counsel can be heard.

Dated November 4, 1903.

JOHN G. JOHNSON,
GEO. B. YOUNG,
M. D. GROVER,
C. W. BUNN,
Counsel for Appellees.

NOV 17 1903
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 433.

THE STATE OF MINNESOTA,
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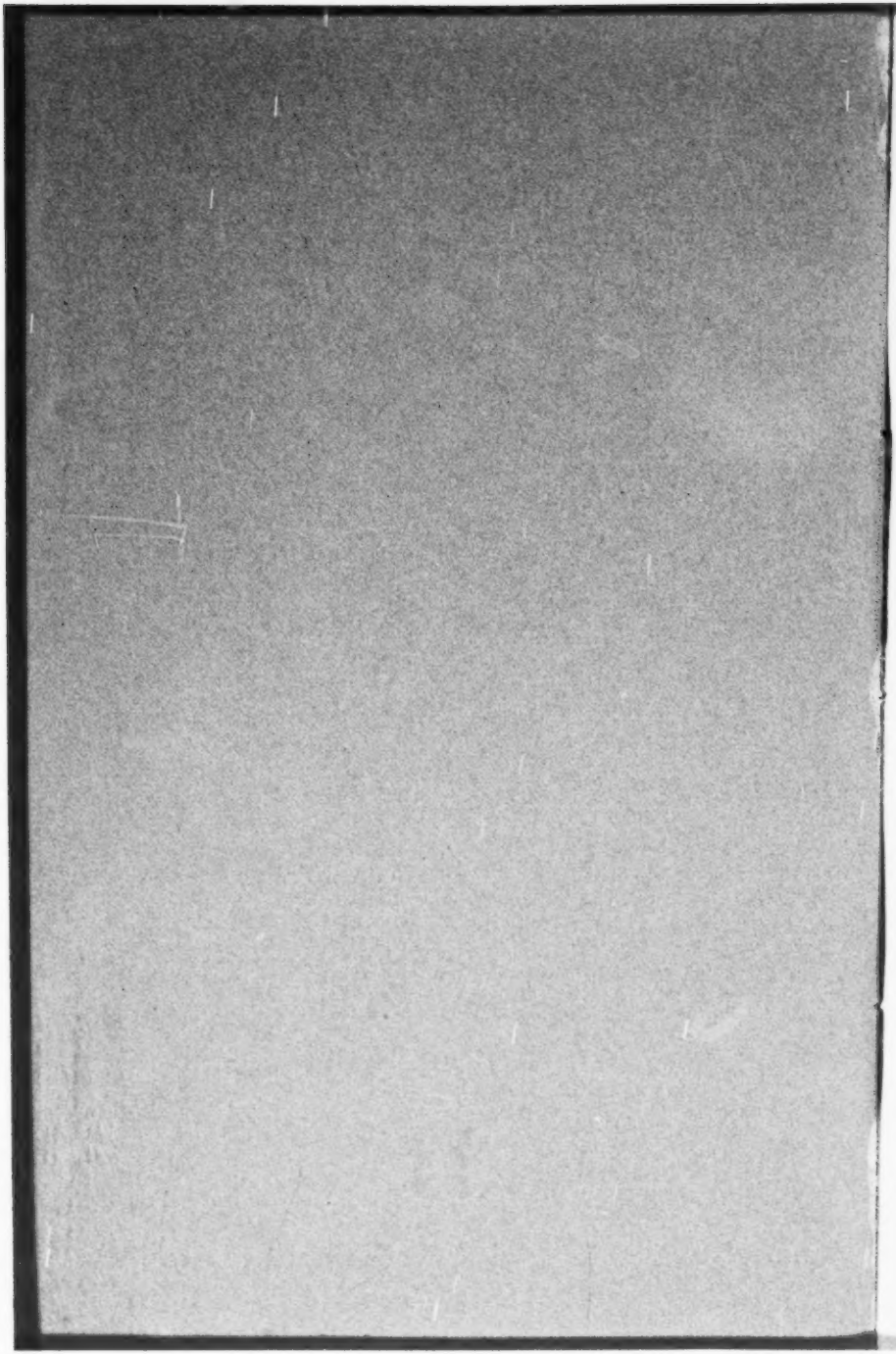
vs.

NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY AND JAMES J. HILL, AS PRESIDENT OF THE NORTHERN SECURITIES COMPANY, AND INDIVIDUALLY,
Appellees.

BRIEF ON MOTION TO DISMISS.

JOHN G. JOHNSON,
GEO. B. YOUNG,
M. D. GROVER,
C. W. BUNN,
Counsel for Appellees.



30381

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 433.

THE STATE OF MINNESOTA,
Appellant,

vs.

NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY AND JAMES J. HILL, AS PRESIDENT OF THE NORTHERN SECURITIES COMPANY, AND INDIVIDUALLY,
Appellees.

BRIEF ON MOTION TO DISMISS.

The appeal in this cause was taken directly to this court by the plaintiff, the State of Minnesota, from a decree of the Circuit Court for the District of Minnesota.

Such direct appeal can be sustained only upon the ground that the case involves the construction or ap-

plication of the Constitution of the United States, or that the constitution or law of a state is claimed to be in contravention of the Constitution of the United States.

But the record shows that while the suit was founded on various federal as well as state statutes, the real controversy was:

(1) Whether the acts of appellees were in violation of the State laws prohibiting consolidation of parallel railways.

(2) Whether such acts were in violation of the State Anti-Trust law.

(3) Whether the state could sue in equity to enforce the provisions of its own Anti-trust law.

(4) Whether the state could sue in equity for relief under the Federal Anti-trust law.

The Circuit Court in the opinion filed by Judge Lochren, decided these points:

(a) That the acts of defendants did not violate the State Anti-consolidation laws, and that such laws were a valid exercise of its police powers.

(b) That the State Anti-trust law was valid as against an objection that its terms embrace interstate commerce; but that it did not prohibit what had been done by defendants.

(c) That the State Anti-trust law does not authorize a suit in equity by the state to enforce its provisions.

(d) That the state could not sue in equity to compel the observance of the Federal Anti-trust law.

Clearly none of these rulings involved the construction or application of the Constitution of the United States.

The direct appeal can be maintained, if at all, only under section 5 of the Act of March 3, 1891, which provides for such appeals:

"In any case that involves the construction or application of the Constitution of the United States."

"In any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States."

To warrant a direct appeal from the Circuit Court to this Court on constitutional grounds, the case must involve a constitutional question really and substantially and not imaginatively. In this respect the rule is the same as on writs of error to a state court, and the rule applied in *Sawyer v. Piper*, 189 U. S. 154, to such writs of error, viz, that the question must be a real and not a fictitious one, is applicable to writs of error and appeals from the Circuit Court. Otherwise any case could be so framed by an artful pleader that it could be brought to this Court.

It is not enough the case involves a Federal question, and so was properly brought in the Circuit Court as a case arising under the *laws* of the United States. The *Constitution*, in its construction or application, must be involved.

Nor is the question here whether a judgment of the Circuit Court of Appeals would be final under section 6 of the Act of 1891. The sole question is

whether, under section 5, a direct appeal can be taken from the Circuit Court to this Court.

It is not material that a constitutional question *might* have been raised here by the appellees had they been defeated below, or that, if some different decision had been made in the case, a constitutional question *might have become involved.* The decisions of this court settle that the constitutional question must be in the case *actually* and not potentially; that is, that the question must have been directly decided by the lower court or have been necessarily involved in what was decided.

Ansbro v. United States, 159 U. S. 695, 697.
Cornell v. Green, 163 U. S. 75, 78.
Muse v. Arlington Hotel Co., 168 U. S. 430, 435.
Western Union Telegraph Co. v. Ann Arbor R. Co., 178 U. S. 239, 243.
Lampasas v. Bell, 180 U. S. 276, 282.

And the constitutional question must not only be present, and be a real and substantial question, but it must be the controlling question.

In *Carey v. Houston & Texas Central Ry.*, 150 U. S. 170, 181, this Court held:

> "In order to hold this appeal maintainable as within * * * the fourth class in the enumeration of the Statute, the construction or application of the Constitution of the United States must be involved *as controlling*, although on appeal or error all other questions would be open to determination if inquiry were not rendered unnecessary by the ruling on that arising under the Constitution."

And in *Carter v. Roberts*, 177 U. S. 496, 500:

> "When cases arise which are *controlled* by the construction or application of the Constitution of the United States, a direct appeal lies to this Court."

This same rule of course applies to appeals under the 6th class, for the question whether a state law contravenes the Federal Constitution certainly "involves the construction or application" of that instrument.

The only ground for a claim that this case involves the construction or application of the United States Constitution, or the question of contravention of that constitution by a state law, is found in the following passages in the record. (1) At the end of paragraph XI, of the Bill, to-wit:

> "And if said Northern Securities Company is allowed to hold and control the stocks of said railway companies and to carry out the purpose and objects of its incorporators as well as its own, full faith and credit will not be given to the public acts of this complainant, and it will be deprived of a further right guaranteed to it by the Constitution of the United States."
>
> (Record, Vol. I, p. 26).

(2) At the end of paragraph VII of the Answer of the Northern Securities Co., viz:

> "These statutes" (i. e. the State Anti-trust and Anti-consolidation law, pleaded in paragraph X of the Bill—Record, pp. 22-24) "the defendants say are in violation of the constitution of the United States." (Record, Vol. 1, p. 64).

(3) The following Assignments of Error (Record, Vol. 1, p. 131):

> "(26) The Court erred in finding and holding that the plan and purpose of organizing the Northern Securities Company for the purpose and in the manner set forth in complainant's complaint, and as shown by the testimony; and the subsequent consummation of such plan and purpose by the issuance and exchange of the stock of the Northern Securities Company for a majority of the stock of the Great Northern and Northern Pacific Railway Companies, did not invade and violate the rights guaranteed to the State of Minnesota under Article IV. of the Constitution of the United States.
>
> "(27) The Court erred in finding and holding that the formation of the Northern Securities Company under the laws of the state of New Jersey for the purpose set forth in complainant's complaint, and as shown by the testimony; and the attempt of the incorporators of said Northern Securities Company to avail themselves of the sovereign power of New Jersey, delegated by said laws, for the purpose set forth in complainant's complaint, and as shown by the testimony, did not constitute a violation of the right guaranteed to the State of Minnesota under said Article IV of the Constitution of the United States, which provides that full faith and credit shall be given in each State to the public acts and records of every other State."

So far as concerns the above quoted averment of the bill and the assignments of error, it is only necessary to glance at them to see that no question arising under the Constitution of the United States is involved, and that they give no right to bring here an appeal direct from the Circuit Court. It is too obvious for serious discussion that the provision of the Constitution referred to by the appellant can,

in no possible view, have aught to do with the case. Whatever ruling may be made or conclusion reached, no interpretation or application of that provision can become involved. As well might the appellant have referred at random to any other clause of the Constitution. The reference to the one thus arbitrarily selected seems clearly to have been an effort of the pleader to create an artificial ground for a direct appeal to this court. If the effort proves successful, the efficiency of the Circuit Court of Appeals in relieving this Court of an intolerable burden of legal work will be at an end.

As to the averment in the answer, viz: "These statutes, the defendants say, are in violation of the Constitution of the United States," it will be observed that it makes no reference to any provision of the Constitution, does not specify what provision is claimed to be contravened. And the state statutes pleaded in the bill and to which this averment in the answer is addressed are three in number, and differ widely in their scope and in their provisions. Record, Vol. I, pp. 22-24.

It is at least doubtful whether the averment in the answer is sufficient to raise any constitutional question as to any of the state statutes.

However this may be, the record shows that the court held the Anti-consolidation Acts to be a valid exercise of the police power of the state, citing *Louisville & Nashville R. R. v. Kentucky*, 161 U. S. 677. (Record, Vol. I, p. 120). And it may be added that these very statutes had been held valid by this

Court in *Pearsall v. Great Northern Ry. Co.*, 161 U. S. 646, (the state itself being a party, and filing a brief, in this court) so that any constitutional question which theretofore existed in respect of their validity, exists no longer, and hence cannot be involved in this case.

Western Union Telegraph Co. v. Ann Arbor R. Co., 178 U. S. 239, 243.

In respect to the State Anti-trust law the Court held that though in terms it assumed in some particulars to regulate interstate commerce, yet these provisions might be disregarded, and the act held valid as to trade and commerce within the state. (Record, Vol. I, p. 113). And at the argument the counsel for the state expressly disclaimed any ground of suit on the interstate provisions of the act. And the Court held that the acts of the defendants complained of by the plaintiff, are not among those forbidden by the State Anti-trust Act, and the case is not within that act. (Record, Vol. I, p. 117).

And the decision in the *Pearsall case* also determined the validity of the Anti-trust law no less than that of the Anti-consolidation laws as applied to this case. Here the only subject to which that law is sought to be or can be applied, is the ownership of stock in two competing railway companies doing a domestic and an interstate business—the very subject to which the Anti-Consolidation laws were applied, and their validity sustained in that case. In the *Pearsall case* and again in the *Louisville & Nashville* case, it was held that the State by its Anti-

Consolidation laws might regulate such stock ownership, though the companies were engaged in interstate commerce. And this foreclosed any constitutional question on the right of the State to make the same regulation by the Anti-trust law. The question whether the State Anti-trust law may be invalid as assuming to regulate interstate commerce in matters not involved in this case cannot possibly arise here.

It is evident that as the case now stands there is in it no constitutional question—certainly none that is controlling. The appellant certainly does not seek a reversal of the decision below sustaining the validity of its own statutes. What it seeks to reverse and all it seeks to reverse is the decision that the statutes, though valid, do not embrace this case—do not forbid such stock holding as that of the Northern Securities Co., and that therefore such statutes have not been violated.

The appeal should therefore be dismissd.

JOHN G. JOHNSON,
GEO. B. YOUNG,
M. D. GROVER,
C. W. BUNN,
Counsel for Appellees.

FILE COPY.

Office Supreme Court U.S.
FILED
JAN 2 1903
JAMES H. MCKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 423.

STATE OF MINNESOTA,
Appellant,
vs.
NORTHERN SECURITIES COMPANY AND OTHERS.

BRIEF FOR RESPONDENT NORTHERN SECURITIES COMPANY.

W. P. CLOUGH,
Of Counsel for Respondent,
Northern Securities Company.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

STATE OF MINNESOTA

vs.

NORTHERN SECURITIES CO.

Points and Authorities for Defense.

The State Anti-Trust Law.

(Laws 1899, E. 359).

SECTION 1. Any contract, agreement, arrangement, or conspiracy, or any combination in the form of a trust, or otherwise, hereafter entered into which is in restraint of trade or commerce within this state, or in restraint of trade or commerce between any of the people of this state and any of the people of any other state or country, or which limits or tends to limit or control the supply of any article, commodity or utility, or the articles which enter into the manufacture of any article or (of) utility, or which regulates, limits or controls or raises or tends to regulate, limit, control or raise the market price of any article, commodity or utility, or tends to limit or regulate the production of any such article, commodity or utility, or in any manner destroys, limits or interferes with open and free competition in either the production, purchase or sale of any commodity, article or utility is hereby prohibited and declared to be unlawful.

That when any corporation heretofore or hereafter created, organized or existing under the laws of this state, whether general or special, hereafter unites in any manner with any other corporation wheresoever created, or with any individual,

whereby such corporation surrenders or transfers, by sale or otherwise, in whole or in part, its franchises, rights or privileges or the control or management of its business to any other corporation or individual, or whereby the business or the management or control of the business of such corporation is limited, changed or in any manner affected, and the purpose or effect of such union or combination is to limit, control or destroy competition in the manufacture or sale of any article or commodity, or is to limit or control the production of any article or commodity, or is to control or fix the price or market value of the material entering into the production of any article or commodity, or in case the purpose or effect of such union or combination is to control or monopolize in any manner the trade or commerce, or any part thereof, of this state, or of the several states, such union, combination, agreement, arrangement or contract is hereby prohibited and declared to be unlawful.

SEC. 2. Every *person* who shall either directly or indirectly make any such contract, agreement or arrangement, or enter into any such combination, conspiracy or trust as defined in section one (1) of this act, shall be guilty of a felony and, on conviction thereof, shall be punished by a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or by imprisonment in the state's prison for not less than three (3) years nor more than five (5) years.

SEC. 3. Any corporation heretofore or hereafter created, organized or existing under the laws of this state which shall hereafter either directly or indirectly make any contract, agreement or arrangement, or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty described in section two (2) of this act, forfeit its charter, rights and franchises, and it shall thereafter be unlawful for such corporation to engage in business, either as a corporation or as a part of any combination, trust or monopoly, except as to the final disposition of its property under the laws of this state.

Any corporation organized under the laws of

any other state, territory or country, which is now located or which may hereafter be located within this state, and engages in the manufacture, production or sale of any article therein which shall either directly or indirectly make any contract, agreement or arrangement or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, be prohibited from doing any further business in this state, except as to the final disposition of its property under the laws of this state.

SEC. 4. Any contract by any person, partnership, association or corporation, whether domestic or foreign, made in conducting business contrary to the provisions of section one (1) of this act, shall not be enforced in any court of this state in favor of such persons, partnership, association or corporation.

SEC. 5. Any person who shall enter into any correspondence, negotiations or agreement in this state, or who shall, being a resident of this state, go into another state, territory or country for the purpose of entering into any negotiations or agreement which tend to the formation of any contract or combination forbidden by this act, shall be guilty of a felony, and be subject to all the penalties of this act.

SEC. 6. That for the purpose of carrying out the provisions of this act, any citizen of this state may, and it is hereby declared to be the duty of the attorney general, to institute, in the name of the state, proceedings in any court of competent jurisdiction against any person, partnership, association or corporation who may be guilty of violating any of the provisions of section one (1) of this act, for the purpose of imposing the penalties imposed by this act, or securing the enforcement of section three (3) hereof. *Provided*, that when such proceedings are instituted by any other than the attorney general, the state shall not be in any manner liable for the costs or for any of the expense of such proceedings. And *provided, further*, that when the attorney general deems it necessary, he is hereby authorized to employ counsel to assist in the prosecution of any action brought under the provisions of this act.

SEC. 7. The word person as used in this act shall be construed to include any corporation or association formed or existing under any law of this state or any other state or country.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved April 21st, 1899."

This statute is a plain attempt by a State to regulate commerce between the States and with foreign countries. The Legislature did not proceed upon the theory of a separation of State trade from Interstate and International. This highly penal law contains no evidence that the Legislature would have been willing to adopt it if its operation were restricted to trade within the jurisdiction of the State.

This may be an instance where the plain invalidity of part of what the Legislature sought to do annuls the whole.

Again, the forbidden acts must be done within the jurisdiction of the State. This limitation attaches to all State legislation. The power of a State to adopt and enforce a policy on any subject is territorially restricted to its own domain; it does not extend to that of other States or countries. Section 2 of the State act shows the intention of the Legislature to restrict the operation of the act to things done within the State of Minnesota, by declaring the doing of them to be a felony, punishable by fine or imprisonment, or by both. The Minnesota Legislature could never design to make criminal, or to penalize, anything done wholly in the State of New Jersey, or in the State of New York.

The things questioned here have been limited to purchases made in the State of New York, by a corporation of the State of New Jersey, of shares, some

in a corporation of the State of Wisconsin, and others in a corporation of the State of Minnesota. Nothing connected with any of these purchases has ever been done in the State of Minnesota. No act of any kind in connection with any of the shares purchased has been, or is intended to be, done in the State of Minnesota. The only acts which the Securities Company can ever do in connection with the stock of either railway company, is to vote upon it at stockholders' meetings, and to receive the dividends which the company may declare and tender to its stockholders. The Securities Company has done neither of these acts, with reference to a single share of stock it owns, within the State of Minnesota, nor does it contemplate doing any of them there. In neither company are the stockholders required to do any act within the State of Minnesota in the exercise of their rights.

The Northern Pacific Railway Company, being a corporation of another State, its stockholders naturally need not go to Minnesota for any purpose. While the Great Northern Railway Company has been created by the State of Minnesota, its charter expressly authorizes it to do all its corporate business, in which stockholders may participate, as distinguished from its transportation business, in which the stockholders cannot participate, outside the State, and in any other State or foreign country.

Act 1865, p. 1,100, fol. 4,381.

The ownership of Great Northern stock is, therefore, not a matter that could in any way require the direct or indirect performance of acts within the State of Minnesota.

These considerations alone, put all that has been

done or contemplated, beyond the intent and operation of the State Anti-Trust Act.

But if some or all of the things which have been done in this matter had been done in the State of Minnesota, the provisions of the first clause of Section 1 would not apply. If any part of this clause could be here applicable, it must be the first six lines, which are as follows :

> "Any contract, agreement, arrangement or conspiracy, or any combination, in the form of trust or otherwise, hereafter entered into, which is in restraint of trade or commerce within this state, or in restraint of trade or commerce between any of the people of this state, and any of the people of any other state or country, * * * is hereby prohibited, and declared to be unlawful."

The remainder of clause 1 is limited to dealings in the market, in things bought and sold there—to things having a "market price." Transportation is a service, and the conditions and rates of compensation for its performance are fixed by tariffs made by the carrier, and filed in an office designated by law. From the rates and conditions thus established and announced, the carrier cannot deviate in favor of or against any person.

The terms "purchase", "production", and "sale" must mean other things than contracts for service.

The first clause of the paragraph is practically identical with the first section of the Federal Anti-Trust Act. Congress and the State Legislature clearly meant to penalize the same things. The State law cannot have broader scope or application than the Federal. Decisions and arguments bearing upon the former are, therefore, equally applicable to the latter.

In making this charge, the State necessarily begs

two questions, which it has brought no proof to answer, viz.:

Whether it would in fact be more profitable to Northern Securities Company, that Northern Pacific and Great Northern should cease to compete? and, whether all persons can, at all times, be expected to break all laws, which, if observed, would tend to reduce the profits of their business.

Unless both these questions must necessarily be answered in the affirmative, without evidence to prove them, the State's case, so far as it rests upon restraint of trade, must fail.

There is no ground for saying that competition between themselves will be detrimental to the revenues of the two railways; and that is undoubtedly the test which the State means to apply.

It cannot be shown, much less assumed, that either of the systems is smaller or poorer for the relations they have borne each other for so many years, or that either would be larger or richer now, if a majority of the stock of each had always been owned by one man. And it must be assumed that the Securities Company will be able to find out what will be most profitable to it, in the long run. It cannot be assumed that the Securities Company will want to change a policy of these companies, toward each other, under which both have prospered for so long. Again, in any case where it would be unlawful for the Securities Company to use its power and position as the majority stockholder, in each of these companies, to suppress competition and restrain trade, it would be criminal; and we cannot assume that any one will commit a criminal act, merely because it might also be assumed that its commission would

be gainful to the doer. Many men, perhaps the average man, might, for profit, disregard a merely directory law; but breach of a criminal law is different. Few men will commit crime, merely for gain. The assumption in advance of the fact, is always that a crime will not be committed. That must be the assumption here.

It is not charged that the railway companies have ever agreed themselves, or that any one else has agreed for them, that they will not hereafter compete for transportation. It is not even charged here that such an agreement is contemplated, by or between anybody. It is merely charged, that, by reason of the purchases and sales of certain shares of stock, it will not hereafter be to the special gain of the present owner of these shares that the two companies shall compete, and that, therefore, it is to be presumed that they will not compete.

Mere motive for competing can never be weighed, measured, nor otherwise computed. Hence it is not a thing the law can regulate. It changes with the ever changing conditions in all trade. When demand overtakes supply all sellers become of one mind to put prices up, but that is no crime. On the other hand, when supply overtakes demand, all buyers become of one mind to put prices down; but that is no crime, either. In each condition all the dealers on one side of the trade cease to compete with each other, but they do not thereby "restrain trade."

To-day two manufacturing concerns may be offering their similar products in the same markets, to the same buyers, and each be making effort to sell. To-morrow one of them having more capital and ambition than the other, plans to extend its trade to a volume beyond

the capacity of its own plant, and perhaps, to a volume equalling the capacity of the plants of both. To realize the hoped-for increase, it arranges with the other to buy its whole output, on terms more attractive to the latter than the business of dividing up its sales among many customers. While such an arrangement lasted, its undoubted effect would be to remove all motive for competition between the two concerns; but none would assert that any law would be violated in consequence.

The device called "pooling," which has for its main feature the putting of the whole, or of some part, of the receipts of several competing concerns into a common fund, or "pool," and the consequent redistribution of them among the contributors, without regard to the amount contributed, plainly takes away, or at least reduces, the motive for competition between the parties. In fact, to do so, is generally the very purpose of the arrangement.

Such things were common both in England and in this country, until generally prohibited by specific statutes; but the common law never regarded them as "contracts, combinations or conspiracies in restraint of trade," or as prohibited on any other ground. This appears from a case in the High Court of Chancery of England.

Hart vs. London & Northwestern Ry., 2 Johnson & Heming, 80.

This was a suit by a stockholder to restrain the carrying out by his company of a pooling contract with several other companies, by which the earnings of three lines of railway, running from London to Edinburgh, and comprising practically all the rail lines between the two places, were pooled for a period of

fourteen years absolutely, and thereafter until the pool should be abrorogated upon six months' notice.

It was conceded that the purpose was to regulate competition between the parties.

The arrangement was not made under authority of any statute, but depended upon the common law.

The Court held the pool valid and dismissed the bill, supporting its conclusions by citation of several previous cases where similar rulings had been made.

Leading counsel for plaintiff was Sir H., afterward Lord Cairns, to whom the report attributes the main argument against the validity of the pool, that it constituted a *quasi-partnership*. It did not occur to him and his learned associates to attack the pool "as a contract, combination or conspiracy to restrain trade." No such claim, under the common law, in regard to pooling appears ever to have received support from, or even in, any English Court.

The construing of the State and Federal Anti-Trust Acts is merely the finding of the meaning of the common law terms they contain.

The terms "restrain" and "restrict," in the common law, have never applied to mere mental states or conditions, but only to things done and acts performed.

Action of no kind has ever been restrained, until some positive bond has been placed upon it. Mere mental indifference is no bond. It "restrains" or "restricts" nothing whatever. It leaves the fullest and freest power of action. Conditions that leave the minds of men indifferent as to whether they will compete or not, or as to the lengths to which they will carry competition, place no "restraint" on trade, or even on competition. Neither is "restrained" by indifference. They are simply not advanced by it. But

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there is the widest difference between omission, or neglect, to trade, or to compete in trade, and "restraint" of trade and of competition in trade. The law could not make men trade, and never has aimed to do so. It can merely say that they shall not bind themselves not to trade, or not to compete in trade.

An examination of the numerous English and American cases dealing with such combinations and contracts, both before and since the passage of the anti-trust acts, makes it easy to see what must be the elements of a transaction to put it in the category of "combinations or contracts in restraint of trade." It also makes easy the recognition of transactions not rightfully belonging to that category.

The uniform characteristics of the transactions classed as such restraints have been, that they were executory agreements; that they provided expressly, or by unavoidable implication, for the future doing or abstention, by some or all the parties to them, of some act or acts; and that the acts provided to be done or refrained from were acts immediately and directly connected with trade operations, and having an immediate and direct effect on them.

Every arrangement that the Federal Courts have thus far held to be such a restraint has had precisely those characteristics.

No arrangement which by its terms is executed, and leaves nothing to be done by the parties to it in future, has heretofore been classed as in restraint of trade.

In particular, purchases of property have never been so classed.

No English court has ever held a purchase to be in restraint of trade, and England has been a great trading country for centuries.

Numerous instances must have happened yearly there, in which trade or industrial competitors have bought out each other's plant and business, or entered into partnership with each other ; or formed corporations to buy up the individual establishments and succeed them in the same line of trade. Such processes have always been a feature of the business organization of every trading and industrial people, and are not the inventions of the last twenty years, nor confined to America. None have been more jealous of combinations, or more zealous to preserve competition than the English ; and yet it does not appear ever to have been suggested, in any English court, that buying and selling could restrain trade.

No Federal Court has ever held that it does. With the possible exception of the Supreme Court of the State of Illinois, the court of last resort of none of the individual states has ever so held.

There is the broadest inherent difference between an agreement by the owners of two competing concerns to divide territory, to restrict output, or to maintain prices, and the outright unconditional purchase of the property and business of one of them by the other. In the former case, the intent of the parties is clearly restrictive. Decrease of trade is the natural and logical result of such an arrangement. Increase under such conditions is practically impossible.

But if one of them buys outright the plant and business of the other, that puts him into position to increase the volume of the trade beyond the previous total, by making the concessions in prices that increased volume always permits.

In itself, the purchase of property employed in trade, by a former competitor, is an arrangement

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adapted rather for the enlargement of business than for its diminution. In most instances, enlargement and not diminution directly results from it. The true interests of the purchaser commonly lie that way, and he usually is capable of seeing them.

A presumption that the buyer of a competing property will use his purchase to diminish trade, would have to rest upon the theory, that the buyer himself will overlook his own real interest, plainly visible to everybody else, which lies in his doing more business, and will throw away his opportunities by trying to do less.

Men able to acquire the money or credit needed for transactions of that sort can be safely trusted to avoid such blunders.

A presumption that the buyer of railways, more or less in competition, will or can use his power to thereafter limit the volume of transportation on either, would not have the support of any experience.

A factory or a store can be closed, and the business transferred to another establishment.

A railway must always be operated to be profitable. It cannot be stopped without making a total wreck of the investment. Its success, as an earner of revenue, always ultimately rests on the volume of its traffic. The larger the traffic, the cheaper the cost of operation, per ton and per passenger. The cost of moving traffic units, on all roads, is fixed by the volume. As the number of tons and passengers increases, the cost for operating, per ton and per passenger, decreases; and *vice versa*.

It is always the direct interest of railroad owners to bring the volume of traffic on every line up to the largest possible point.

Some stockholders in railroad companies sometimes imagine themselves benefited by decrease in volume of the traffic of other companies; but none has ever been found who thought so about his own. In the long run, operating cost determines rates. It could not be otherwise. A road able to increase its volume of traffic, and in that way to reduce the cost per ton or passenger handling it, can afford to, and always does, attract additional business by sharing the savings with its patrons.

Nobody is so vitally interested in the largest possible movement of trade as the owner of railways. This is proven by unbroken experience.

Every arrangement for uniting the control of previously competing railroads in this country, whether by lease, purchase, or acquisition of stock, and every increase in the size of the various systems, and in the extent of territory reached by them, has resulted in large increases in facilities and traffic, and, as a direct and necessary result, in lower rates to the public.

Ownership of the stock of both these railroad companies and voting thereon at the only places where it can be voted—namely, stockholders' meetings—cannot of itself increase or lessen the degrees of competition between the two. The powers of the two corporations over all matters pertaining to their construction and transportation business are vested in the respective boards and not in their shareholders. On this point the Northern Pacific charter reads:

> "All of the affairs of said company shall be managed by a board of directors, who shall be stockholders, and who are hereby invested with all the powers of the corporation, save as hereinafter provided."
>
> Ev., p. 1145, fol. 4563.

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The excepted powers relate to merely corporate, as distinguished from transportation matters. The Great Northern charter on this point reads :

> " And all the affairs and business of said company shall be conducted by or under the direction of the board of directors, and they are authorized, for the purposes specified in this act, to make and establish regulations and by-laws, and to do all things necessary to be done and not inconsistent with the Constitution and laws of the United States, or by the laws of this territory or this act."
> Ev., p. 1100, fol. 4381.

In regard to every construction and transportation matter, therefore, the Board of Directors, and not the stockholders, is the corporation. The ownership of the majority of both stocks has not the slightest direct effect upon the conduct of the business of either company. It may act on the motives of boards and officers ; but the laws have never tried to deal with mere power or motive. They cannot. What Federal and State laws have prohibited as combinations and contracts " in restraint of trade," in acts, and not mere power or motive.

Power acquired by purchase is not " in restraint of trade."

The Decisions of the Federal Courts.

The meaning of the Anti-Trust Act first prominently came before this Court in *United States vs. Knight, 156 U. S., 1.*

The American Sugar Refining Company was a corporation under the laws of the State of New Jersey, engaged in the business of buying raw sugar throughout the world, importing it into the United States, there

refining it, and afterwards, when so fitted for sale, selling it throughout the United States.

The E. C. Knight Co. and three other companies were also corporations under State laws, and each owned and operated sugar works near Philadelphia.

The American Sugar Refining Company, in 1892, bought from the individual holders thereof all the capital stock of each of the four Philadelphia concerns, and paid for the same by transfer of its own stock to the vendors, at agreed prices. The Government thereupon filed its bill, in a Circuit Court of the United States, asking to have the sales annulled, as violating the Anti-Trust Act, and to compel a return of each set of shares to its former owners. The Circuit Court made a finding of the facts in the controversy, and, as a conclusion of law, held the transactions valid. The Government appealed. The appeal was heard in the Supreme Court and the judgment of the lower Court was affirmed.

In the course of its opinion the Supreme Court said :

> " Congress did not attempt thereby to assert the power to deal with monopoly, directly as such, *or to limit and restrict the rights of corporations created by the States, or the citizens of the States, in the acquisition, control or disposition of property, or to regulate or prescribe the price or prices for which such property, or the products thereof shall be sold ; or to make criminal the acts of persons in the acquisition and control of property, which the states of their residence or the nation sanctioned or permitted* " (p. 16).
>
> " There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce ; and the fact, as we have seen, that trade or commerce may be indirectly affected, was not enough to entitle complainants to a decree. The subject matter of the sale was shares of manu-

> facturing stock, and the relief sought was the surrender of property which had already passed, and the suppression of the alleged monopoly in manufacture, by the restoration of the *status quo* before the transfer ; yet the Act of Congress only authorized the Circuit Court to proceed by way of preventing and restraining violations of the act, in respect of contracts, combinations and conspiracies in restraint of international trade or commerce " (p. 17).

The Pennsylvania corporations, whose stock the American Sugar Refining Company bought and paid for with its own stock, were not merely the owners and operators of works for performing a chemical and mechanical process on raw sugar. That was an incident of their business, but not its chief feature. The E. C. Knight Co. was incorporated under the Laws of the State of Pennsylvania for the purpose of " *importing*, manufacturing, refining, *and dealing in* sugar and molasses " (p. 2). The charters of the other three Philadelphia concerns were similar.

The four defendants

> " were located in Philadelphia, and, prior to March, 1892, produced about 33 per cent. of the total amount of sugar refined in the United States, and were in active competitien with the American Sugar Refining Company, and with each other, *selling their products wherever demand was found for it, throughout the United States.*"
>
> Findings of Court, p. 5.

The real business of the Philadelphia companies was buying sugars in foreign countries and selling them throughout the United States. The works in Pennsylvania were not places for the refining the sugars of others for hire, nor places merely for the refining of sugars grown in the State of Pennsylvania, for Pennsylvania grows no sugars. The works were

mere implements for fitting raw sugar, imported and owned by the companies themselves, for resale by the same companies throughout the several States in this country.

The companies whose stocks the American Sugar Refining Company bought, therefore, were not mere manufacturers, local to the State of Pennsylvania, but were also international and interstate traders.

The purchase of their stocks by the American Refining Company carried precisely the same control over the international and interstate trade, which was the principal business, as it did over the sugar works, that were mere tools of that business.

> "Prior to March, 1892, the American Sugar Refining Company had obtained control of all refineries in the United States, excepting the four located in Philadelphia, and that of the Revere Company in Boston, the latter producing about 2 per cent. of the amount refined in the country."
> Findings of Court, p. 5.

The obvious effect, upon the foreign and interstate trade of the country, of acquisition of control by the American Sugar Refining Company of the Pennsylvania companies must have been, firstly, to diminish the number of buyers of raw sugars, by which the prices for that article would naturally be weakened, and, secondly, to decrease the number of sellers, throughout the country, of refined sugars, by which prices of refined would naturally be strengthened. Such matters of common observation and knowledge could not possibly have escaped the attention of the Court while this case was under consideration; and it must be assumed that, in arriving at its judgment, the Court gave them the weight which was their due.

Some isolated expressions of the opinion in this case have been pointed out as indicating that the Court meant to place its decision on the narrow ground of the business of the Philadelphia concerns being mere manufacturing, localized within a single state. How could the Court have meant that, in view of the facts?

The Court must have intended to base its conclusions upon all the facts found, among which were that the business controlled by the purchased stock was interstate and international—importation of the raw materials and sale of the finished product throughout the country. Nobody ever questioned these facts.

The real point decided, must have been the one stated in the above quotations from the opinion, viz., that a transaction limited to the purchase and sale of property does not violate the act.

The sugar case also directly refutes the doctrine that the Anti-Trust Act is violated by one person or corporation acquiring, through purchase of property, mere power to restrain the interstate trade of two concerns competing for that trade. Undoubtedly it would have been a violation of the act if the American Sugar Refining Company, instead of buying the stock of the four Philadelphia concerns, had made an agreement with them to divide territory, or to keep down their bids for raw sugar to designated prices, or to maintain stipulated prices on refined sugar, or to wholly or partially retire from business, or to restrict output. When the American Sugar Company bought the entire capital stock of each of the four corporations, it certainly acquired the fullest power to elect a Board of Directors for each company that could manage the business of that company as it should see fit.

The board could cause the company to bid as much

or as little for raw, and to offer refined for as much or as little, as it should choose. It could restrict the output or stop business operations wholly. For such action the board could be questioned by the stockholders alone.

The power to cause the doing of all these things was acquired by the American Sugar Refining Company when it bought the stocks, and by the mere act and fact of its purchases. The American Sugar Refining Company knew that, too. The acquisition of that power was the chief object of the purchases.

> "The object in purchasing the Philadelphia refineries was to obtain a greater influence or more perfect control over the business of refining and selling sugar in this country."
> Findings of Court, p. 6.

The extent or completeness of power over the whole volume of international and interstate trade was not regarded as making invalid a purchase of property otherwise legal; for, as shown by the above quotations from the findings, the purchases by the American Sugar Refining Company completed its control of 95 per cent. of the total sugar business of the country.

This case has never been overruled, modified or in any way subtracted from, by any subsequent decision of the Supreme Court.

The case also refutes the claim that purchase by one corporation of the stock of another, and payment therefor in its own stock, is a trust or combination. The American Sugar Company bought its stocks that way.

U. S. vs. Trans-Missouri Freight Association, 166 U. S., 290, and *U. S. vs. Joint Traffic Association*, 171

U. S., 505, presented states of fact similar in all essential respects.

The Trans-Missouri Association included the operations of practically all the railway mileage lying west of the Missouri River. Its memorandum of association, subscribed by each member, provided for a chairman, and also that "A Committee shall be appointed to "establish rates, rules and regulations on the traffic "subject of this Association, and to consider changes "therein, and make rules for meeting the competition "of outside lines. Their conclusions, when unanimous, "shall be made effective, when they so order."

The contract also imposed fines for disobedience of rulings of the association.

Parties to the contract could withdraw on thirty days' notice, but during that period remained subject to the contract.

Report, pp. 294–5.

The Joint Traffic Association was composed of about thirty railroad companies, operating between Chicago and the Atlantic Coast. Articles were subscribed by each member, providing that the affairs of the Association should be administered by several boards, and that it should have jurisdiction over all competitive traffic, with certain exceptions, passing through the Western Trunk Line termini and such other points as the managers should designate.

The published schedules of rates then in force were reaffirmed; and from time to time the managers were to recommend such changes in rates, fares and charges as might be reasonable, just and necessary for governing the traffic covered by the agreement, and for protecting the interests of the parties to the agreement.

A failure to observe such recommendations, by any of the parties to the agreement, was to be deemed a violation of the agreement. No company was permitted in any way to deviate from or to change the rates, fares, charges or rules set forth in the agreement or recommended by the managers, except by resolution of its board of directors, and such action should only affect its own road.

A copy of any such resolutions should immediately be forwarded by the company making same to the managers of the association, and the change was not to become effective until thirty days after the receipt of such resolution by the managers. Upon receipt of any such resolution, the managers were to act promptly " for the protection of the interest " of the members.

Joint freight and passenger agencies might be organized by the managers, and, if established, were to be arranged so as to give proper representation to each member. Soliciting or contracting passenger or freight agencies were not to be thereafter maintained by the companies, except with the approval of the managers, and no one that the members objected to was to be employed or continued in the agency.

Any violation of the agreement was to be followed by a forfeiture by the offending company, in a sum to be determined by the managers, which should not exceed $5,000; or, if the gross receipts of the transaction, which violated the agreement, should exceed $5,000, the offending party should, in the discretion of the managers, forfeit a sum not exceeding such receipt.

The sums thus collected were to go to the payment of the expenses of the association, except that the offending company should not participate in the distribution of its own forfeiture.

The agreement also provided for assessments upon the companies, to pay expenses.

No one retiring from the association before the time fixed for final completion, except by unanimous consent, should be entitled to any refund from the contributions.

The agreement was to take effect January 1, 1896, and continue for five years, and thereafter until 90 days' written notice by any company of its purpose to retire.

Neither of the arrangements condemned in these two cases included any sale or purchase of property. Each company that signed the association articles kept everything it had, but turned the management thereof, in vital particulars, over to another. A large number of companies, competing for the same interstate traffic, put their rate-making power into common hands, for a longer or shorter period of time, and promised to observe the rates thus fixed.

In the Trans-Missouri case, the power of the committee was absolute, for at least the 30 days required for notice of withdrawal, and during membership departure from the committee's tariff would not only require violation of an express and specific agreement, but subject the offender to a stipulated penalty, as well.

The Joint Traffic agreement also put the rate-making power out of the hands of the member companies for at least thirty days; that is to say, any change of rates previously fixed by the association could not be made, even by the Board of Directors of a company without 30 days' notice to the association. Except by unanimous consent, no company, once a member of the association, could withdraw, without subjecting itself to the loss of its contribution to the common

fund. Any violation of the agreement during membership was punishable by a fine equal to the total receipts from the transactions involved. The member companies even renounced during membership the right to individually solicit traffic. The agreements involved in these cases, therefore, not only did not resemble, but were in perfect contrast with, the absolute purchase and sale of property. The decisions did not overrule or even qualify that in the Sugar case. The two groups of cases covered transactions totally dissimilar, and mark the clear line between those which are not transactions in restraint of trade and those which are.

The Court did not leave to necessary inference the distinction between the two classes of transactions, but in its opinion in each case expressly declared it. Thus, in the Joint Traffic case, the Court said :

> " Nevertheless, we might say that the formation of corporations for business or manufacturing purposes has never, to our knowledge, been regarded in the nature of a contract in restraint of trade or commerce. The same may be said of the contract of partnership. * * * We are not aware that it has ever been claimed that a lease or purchase by a farmer, manufacturer or merchant, of an additional farm, manufactory or shop, or the withdrawal from business of any farmer, merchant or manufacturer, restrained commerce or trade within any legal definition of that term, and the sale of a good-will of a business with an accompanying agreement not to engage in a similar business, was instanced, in the Trans-Missouri case, as a contract not within the meaning of the act ; and it was said that such a contract was collateral to the main contract of sale, and was entered into for the purpose of enhancing the price at which the vendor sells his business." * * *

In using this language the Court was not taking the trouble to say that two and two do not make seven.

When it spoke of the formation of corporations and partnerships it was not referring to those started as new enterprises, by persons not previously engaged in the same line of business. So, when it spoke of purchases of property, it did not trouble itself to say that the owner of a tannery may rightfully buy an iron foundry.

On the contrary, the Court had in mind persons and properties previously competing for the same trade. The questions which defendant's counsel put to the Court, and which the Court answered in the quoted passage of its opinion, concerned purchases and sales, and corporations and partnerships, between former competitors, whereby rival properties and trades are put together into a common ownership and control.

It may be further remarked that the nature of the arrangements in the Trans-Missouri case and in the Joint Traffic case was such that, if they restrained trade at all, they did so immediately upon the signing of the agreement, and subsequent proceedings under it were immaterial.

The moment each member subscribed the articles, its ability to name rates, or to independently solicit business had been renounced. The mere act of signing had this direct and necessary effect upon the trade which the articles covered.

At the same term as the Joint Traffic case, *Hopkins vs. United States*, 171 U. S., 578, was decided. The arrangement there attacked was executory in character, but held by the Court not to be directly and immediately in restraint of trade, and, therefore, not unlawful. In its opinion the Sugar case was cited, with no remark throwing doubt upon its authority, or showing any purpose of the Court to limit its scope.

The *Addyston Pipe Case*, 175 U. S., 211, was also an instance of an executory contract, entered into by six separate manufacturers of cast-iron pipe for gas, water and sewer purposes. Each party retained ownership of its property and continued to run its manufacturing business. These shops together controlled the market in their line of goods, over a territory comprising several States. Their owners entered into an agreement to control prices. This was done by means of a managing Board, composed of a member from each shop, to which all inquiries for pipe coming to any of the shops was referred. When an important contract for pipe was about to be let, the Board estimated the highest price that would be likely to secure the sale, and then received from each individual member an offer of the amount of bonus he would give for the privilege of exclusively bidding that price at the letting. The member offering the largest bonus got the privilege. The bonus was divided among the remainder, and, in consideartion thereof, they refrained from bidding, or bid higher, at the letting.

This case, therefore, fell into the same group as the Trans-Missouri and Joint Traffic cases, and not into that of the Sugar case.

In every case where a United States Court has held an arrangement invalid under the Anti-Trust Act it has been merely an executory contract for regulating prices, or output, or both. In none of those cases has there been involved the validity of a sale of property in any form, whether lands, goods or corporate stocks. Among them, in addition to those cited, have been:

U. S. vs. Coal Dealers' Assn., 85 Fed. Rep., 252.

Moore vs. U. S., 85 Fed. Rep., 465.

U. S. vs. Chesapeake & Ohio Fuel Co., 105 Fed. Rep., 93. 115; do., 620.

The Decisions of the State Courts.

The cases in the State Courts, regarded as a body, have proceeded along the same general lines as have those in the Federal Courts; that is, executory agreements only, and not sales of property, have been held invalid, as unlawfully restraining trade.

One of the early and most prominent of the State cases was:

People vs. N. River Sug. Ref. Co., 121 N. Y., 582.

This suit was brought by the Attorney-General of the State of New York, against a corporation organized under the general laws of that State, *to vacate its charter and annul its corporate existence.*

An agreement was made by and between various corporations engaged in the sugar refining business, including the North River Co. To this agreement the name of the defendant was signed by its secretary, as he testified, "by virtue of authority * * * from the stockholders and trustees."

By the agreement, a "Board" was formed. The parties agreed to transfer all their shares of capital stock "to the names of the Board, *as trustees*, to be held by them, and their successors, as members of the Board, *strictly as joint tenants*," with all the rights and powers incident to stockholders in the several corporations." The Board was authorized to transfer "to "such persons as it may be desired to constitute di- "rectors or trustees, or other officers of corporations, "so many of the shares as may be necessary for that "purpose." In lieu of the capital stock, certificates should be issued by the "Board" to the contracting

parties, in specified proportions. Each of the parties should maintain a separate organization, and carry on and conduct its own business, paying over the profits to the "Board;" the aggregate, or such amount as should be designated for dividends, to be proportionally distributed by the "Board" to the holders of certificates.

The number and amount of shares to be issued by the "Board" was fixed, with a proviso, that "they may, from time to time, be increased or diminished by deeds executed by a majority in value of the certificate holders."

Defendant's stock was transferred and trust certificates issued to its stockholders, as provided for. The "Board" elected defendant's officers and Board of Trustees, having transferred to each a share of the stock, to enable him to hold office.

The Court held, that the transaction was *not an absolute sale of defendant's stock by its holders*, but that a trust was created in the "Board" to whom, as a trustee, and upon the trusts declared, the stock was transferred, that the certificates issued were formal declarations of the trust, and through the operation of which the stockholders retained the beneficial ownership; that, by the deed, the corporations had entered into a copartnership, vesting the partnership power in the "Board."

If there had been an actual sale of the stock, to the Board, it would not have been illegal.

Opinion, p. 611, at top.

The offense of which the defendant was convicted was that it had unlawfully "entered into a partnership" (p. 623, at bottom).

It is a matter of common knowledge that, shortly after this decision of the Court of Appeals, the parties planning a common control of the sugar business of the country acted upon the Court's suggestion that an outright purchase of the stock would be legal, and caused the formation of the American Sugar Refining Company, which made the purchases.

Proof of the soundness of the suggestion exists in the fact that the American Sugar Refining Company has ever since continued to hold and exercise all rights of ownership over the New York sugar concerns, without challenge from the State, or any other public authority.

In the State of Pennsylvania, the Courts have held that an arrangement between coal companies to fix prices and divide the trade is illegal, without reference to any statute.

Morris Run Coal Co. vs. Barclay Coal Co.,
68 Penn. State, 173.

This was an agreement between five coal companies, operating mines in Pennsylvania, to divide the coal regions of which they had control, to appoint a committee to take charge of their interests, and to appoint a general agent of all the companies at Watkyns, New York; all coal to be delivered through him in the different markets, at such times and to such persons as the committee might direct. Each coal operator should deliver coal only to the extent of his proportion, and at prices adjusted by the committee.

The agent was empowered to suspend shipments by any operator beyond his allotted proportion. This arrangement was held a combination in restraint of trade and invalid. It was of precisely the character of

every arrangement held invalid by a United States Court under the Anti-Trust Act of Congress. It was an executory contract for the management of a business in a specified way, and not for the absolute sale of the business or of the property with which it was conducted.

No Pennsylvania case or even dictum has been found where the validity of a sale of property has been called in question as a restraint of trade.

Morris Run Coal Co. vs. Barclay Coal Co. has often been cited in cases founded on alleged restraint of trade, but it does not go farther than above stated.

In the State of Ohio, *Central Ohio Salt Co. vs. Guthrie*, 35 Ohio State Rep., 656, grew out of a combination of salt manufacturers.

A number of separate concerns combined to regulate the price of salt, the combination to last for five years. The Association was not incorporated, but was to do business under the name of the "Central Ohio Salt Co." The individual manufacturers retained their works and carried on their producing business, as before; but one of the clauses of the Articles of Association was: "All salt made or owned by the members of this association shall be branded as the directors may require; and become the property of the company when packed out in barrels." P. 668. Departure by members from prices for products fixed by the association, was to be punished by fine.

This suit was brought by the Association, against one of its members, to enforce the agreement; and it was held void, and not enforceable.

State vs. Standard Oil Co., 49 Ohio State, 138.

This was an information to dissolve the Standard Oil Co., of Ohio.

An agreement had been made between the holders of all the shares of the defendant, except 7, to place their stock in the hands of trustees, for the management of the business of the company, in harmony with other competing companies.

All the officers and directors of the company signed the trust agreement, in their individual names, but did not affix the corporate seal, nor their official designations. It was held that, notwithstanding the absence from the contract of the corporate seal, and the official designations of the signing officers and directors, it was nevertheless to be deemed that the corporation had become a party to the contract, and the judgment prohibited it from carrying the same into effect.

The trust agreement did not include a sale of any property. The stockholders retained their beneficial ownership of the stock, and merely transferred the voting power upon it, for the purpose of enabling the trustees to manage the corporation's business in combination with that of former competitors.

A case often cited is *Richardson vs. Buehl & Alger, 77 Mich., 632.*

That was a suit to restrain the defendants from enforcing repayment of advances to plaintiff by sale of certain stocks held as collateral. Plaintiff claimed that the right of defendants to enforce repayment did not exist, because of certain contracts for combining the match business of the country. The Court held these contracts contrary to public policy, as in restraint of trade and denied the injunction. No question of the

right to own or hold property, or of the validity of any sale of property, was in the case.

In the State of Illinois a series of cases involving alleged restraints of trade have been ruled upon.

Chicago Gas Light Co. vs. People's Gas Light Co., 121 Ill., 530.

In 1849 a gas company was chartered with the exclusive privilege of supplying Chicago with gas for the period of ten (10) years. In 1855 another gas company was formed under a special charter, empowering it to manufacture and sell gas in the same city, after expiration of the exclusive privilege given to the prior company. Each company erected the necessary works in the city for manufacture and supply of gas, when the two companies made a contract by which they exchanged mains and pipes in parts of the city, and each agreed with the other to have exclusive right of supplying gas in its part of the city for 100 years, neither to interfere with the business of the other in its territory.

By its charter, and city ordinances of Chicago, each company was empowered to lay pipes in all streets of the city. The contract above mentioned was observed by both parties several years, when the Chicago Gas Light Co. prepared to violate it, by extending its pipe system into the territory assigned by the contract to the exclusive exploitation of the People's Company. The latter then began this suit, for an injunction enforcing the contract, and restraining the Chicago Company from making the threatened invasion of territory.

The following quotation from the opinion of the Supreme Court fully states the point decided:

> "Neither appellant or appellee has any power to make the contract now under discussion. By

the amendment of February 7, 1865, appellee was authorized to borrow money, and to mortgage or lease any of its property or franchises; but in April, 1862, neither the charter of appellant, nor that of appellee conferred any authority to sell, transfer, assign, or make over, to any other company, any of the powers or franchises therein granted. By the contract, appellant virtually assigns, surrenders, and transfers all its rights under its charter, to make and sell gas in the West division to the appellant. The authority to assign and transfer the privilege of making and selling gas is not incident to, nor necessarily implied from the power of making and selling gas.

"Corporations have such powers, and such only, as the Act creating them confers, and are confined to the exercise of those expressly granted, and such incidental powers as are necessary to carry into effect those specifically conferred" (pp. 546-7).

The bill was dismissed on the above grounds. The question of title to the property transferred was not litigated. The only questions litigated were the validity and enforcement of the executory features of the contract.

People vs. Chicago Gas Trust Co., 130 Ills., 269.

Information against the Company,

"that the said Chicago Gas Trust Co. * * * has usurped and unlawfully exercised, and now usurps and unlawfully exercises, powers, liberties, privileges, and franchises not conferred by law, to wit, the power, liberty, franchise, and privilege of obtaining, by purchase, or in exchange for its own stock, and holding and owning * * * a majority and controlling interest in the shares of the capital stock," etc. (p. 273).

The corporation was formed under the general laws of the State of Illinois, by the filing of articles of incorporation. These articles specified the objects of

the company to be: (1) to produce gas and electric light; (2) to buy, sell or hold the stock in other similar companies.

Pp. 274–5.

In the course of its opinion the Court said:

"The power to purchase and hold stock in other companies must be the subject of legislative grant, if not in all cases, at least in cases where it cannot be implied from the powers expressly granted. The general incorporation law contains no such grant of power by the legislature. Can a corporation organized under the law be clothed with such a power by merely naming it in the statement filed with the Secretary of State? We think not" (p. 286).

"Even if shares of stock be regarded as personal property * * * section 5 of the general law provides that corporations formed under it 'may own * * * so much * * * personal estate as shall be necessary for the transaction of their business, and may sell and dispose of the same when not required for the uses of the corporation * * * and may have and exercise all the powers necessary and requisite to carry into effect the objects for which they may be formed.'"

"*This language negatives the idea that corporations formed under the general law can exercise the power of buying and selling the stock of other companies. A company engaged on its own account in manufacturing and selling gas does not need the stock of other gas companies in order to transact its business. Hence, it is forbidden to own such stock, the same being personal estate*" (p. 287).

"We have already seen that, where the object of forming a gas company is to engage in the business of making and selling gas, the purchase of stock in other companies is not necessary to carry such object into effect. *Therefore, the general incorporation act not only does not expressly authorize the purchase of such stock, but impliedly forbids it, in cases where the main purpose of the company is other than the purchase and sale of stocks*" *(pp. 267–8).*

> " Our conclusion upon this branch of the case is, that if the Chicago Gas Company be regarded as a corporation formed for the purpose of creating or operating gas works, and manufacturing and selling gas, *it has no power to purchase and hold or sell shares of stock in other gas companies, as an incident to such purpose of its formation* even though such power is specified in its articles of incorporation " (p. 258).

This ruling of the Court completely disposed of the entire case upon the ground of want of power in the defendant, under its charter, to acquire stock in any other corporation, however small the amount. The decisive question was not one of a right to own and hold property, but of the construction of the general incorporation law of the State.

The Court, nevertheless, proceeded to express the view that acquisition, by defendant, of a controlling interest in the stock of a competitor would be contrary to public policy, and that, consequently, the general incorporation act of the State, under which defendant took out its charter, should not be construed as conferring upon it power to make it.

Distilling Co. vs. The People, 156 Ills., 448, went on practically the same grounds as *People vs. The Gas Trust,* viz., that the general incorporation act, under which the Distilling Company was organized, was not broad enough to authorize a charter for buying up and controlling distillery plants that produced the bulk of all the spirits made in the country. The form of the suit was *quo warranto* to oust the Distilling Company from the right to buy and own the plants. The case turned on the construction of the incorporating act and not on the question of how much property might lawfully be under control of a single interest.

Bishop vs. American Preserves Co., 157 Ills., 284, was an instance of a combination between six companies, located in various parts of the country, for regulating sales and prices. As part of the arrangement, the six companies took out a charter, under the laws of West Virginia, combining them into one company; but each individual company seems to have thereafter maintained its existence and identity as before.

Harding vs. American Glucose Co., 182 Ills., 553, was a bill filed by a stockholder against a corporation and its officers on the ground that the plant and business were about to be sold out for an inadequate price to a New Jersey corporation, organized for the alleged purpose of buying up all the glucose plants of the country and establishing a monopoly in the manufacture and sale of glucose. The Court seems to have put its decision upon the express intention to monopolize. The evidence in the case sustained the inference that the express purpose of the promoters of the American Glucose Company was to control, if not to monopolize, the entire glucose business of the country. The Court held the accomplishment of such an object by purchase of the plants would be equally unlawful as doing so by means of a trust merely to hold and manage them. No precedent for this ruling was cited. None can be found. The Court exercised a plain act of legislative power. The case stands alone in holding that purchases of property can never fall within the rule of the common law and the existing statutes aimed at restraints of trade, and that a transfer of absolute title is illegal if its effect would be to reduce competition.

The Glucose case is flatly antagonized by the more

recent case in the State of Texas, *State vs. Shippers' Compress & Warehouse Co. (67 S. W. Rep., 1049; 69 S. W. Rep., 58);* also by a case in the State of New Jersey, decided about the same time *(Trenton Potteries Co. vs. Oliphant, 58 N. J. Equity, 507).*

The Texas case arose under a State law prohibiting monopolies. The defendant had bought, and was operating, a large number of plants used in compressing cotton for shipment. The State claimed that a monopoly of the business in the hands of the defendant, or, at least, a very dangerous restraint of trade in that line, had resulted, but the Court held :

> " One may, if financially able, acquire much or all the property of a given class, provided the purchase was not made for the purpose of imposing or accomplishing harmful results to the public ; and from a bare exercise of the privilege it cannot be inferred that the purpose and intention was to create a monopoly, or that a monopoly necessarily results from such extensive acquisition."

The *Trenton Potteries* case was between private litigants. Eight manufacturing concerns, seven of them located in Trenton, practically monopolized the production of certain sanitary articles in general use throughout the country. To avoid excessive competition between themselves for this trade, the eight concerns had formed an association to regulate prices in which association the vote of a majority of the members controlled. The plaintiff acquired five out of the eight, which gave it a controlling voice in the association. The defendants had sold one of the plants, which the plaintiff got, and gave with it an agreement not to afterwards engage in the same business within a designated territory. This suit was to enforce that agreement. The defendants claimed that the real ob-

ject of the purchase, which the agreement accompanied, was to combine the control of the business of the country in the line of goods produced, and that, consequently, the agreement was an illegal restraint of trade. The court of last resort held to the contrary, among other things, saying:

> "While contracts to restrain or limit competition in the production of that ware may be repugnant to the public interest, such a restraint or limit may result from contracts which the courts are bound to enforce.
>
> "A person engaged in any manufacture or trade, having the right to acquire and possess property, and to do with it what he chooses, may lawfully buy the business of any of his competitors. His first purchase would at once diminish competition. If he continued to purchase, each succeeding transaction would remove another competitor. If his capital was large enough to enable him to buy the business of all competitors, the last purchase would completely exclude competition, at least for a time. But, in the absence of legislative restriction (if such could be imposed), upon the acquisition of such property, and its use when so acquired, courts could impose no limitation.
>
> "They would be obliged to enforce such contracts, notwithstanding the effect was to diminish, or even to exclude competition."
>
> pp. 523–4.

> "But appellant is a corporation, and not an individual. Corporations, however, may lawfully do any acts within the corporate powers conferred on them by legislative grant. Under our liberal corporations laws, corporate authority may be acquired by aggregations of individuals, organized as prescribed, to engage in and carry on almost every conceivable manufacture or trade.
>
> "Such corporations are empowered to purchase, hold and use property appropriate to their business. They may also purchase and hold the stock of other corporations. Under such powers, it is obvious that a corporation may purchase the

> plants and business of competing individuals and concerns. * * * It follows that a corporation empowered to carry on a particular business, may lawfully purchase the plants and for a time, at least, destroy competition. Contracts for such purchases cannot be refused enforcement."
>
> pp. 524–5.

The second clause of Section 1 is not material. That paragraph applies exclusively to corporations organized or existing under the laws of this state; *i. e.*, the State of Minnesota. The Securities Company was organized and exists solely under laws of the State of New Jersey.

The Northern Pacific Railway Company was organized and exists solely under the laws of the State of Wisconsin. It derives its permission to own and operate railways lying within the State of Minnesota from the latter State; but that permission has nothing to do with its organization or existence as a corporation. Its organization or existence as a corporation would not in the least be affected, if such permission by the State of Minnesota should be withdrawn. Of the three corporation defendants, the Great Northern Railway Company alone answers the description of corporations of which the legislature in that paragraph speaks.

As a matter of fact, nobody has done any of the things prohibited by the paragraph; but it is essential here, only to inquire if Great Northern has done some of them.

What the paragraph forbids is that a corporation of the state should thereafter "unite in any manner, *with any other corporation wheresoever created, or with any individual.*" Exactly what Great Northern has done in the series of transactions under review, has been

proven. It has entered upon its stock transfer books notation of the fact that sundry of its stockholders, owning about $50,000,000 of its stock out of a total of $125,000,000, have sold their shares to Northern Securities Company, and has recognized the latter as successor of the sellers in the ownership of the shares sold. It might also be conceded, though not proven, that the Great Northern Company has been informed of the other purchases by Northern Securities, and has not objected to any of the sales of its shares to the latter. By entering upon its stock books transfers of its shares which its stockholders, without its request, or even suggestion, have made to others, a corporation does not "unite" with anybody. It merely gives that recognition to transactions, exclusively between others, which its charter, and the general laws governing it, require. The meaning of the term "unite," in this clause, can cover only some action by the company, in its corporate capacity, by which it directly enters into a combination. Furthermore, the act requires the arrangement to be one through which the corporation parts with some of its rights, franchises or privileges, or with some "control" over its business. The "control" here meant, cannot be that resulting from mere ownership of stock. The paragraph does not mention stock or stockholders. It leaves absolute and unconditional sales and purchases of stock precisely as they stood before the passage of the act, by omitting any reference to the subject, or to stockholders. That being so, the corporation must remain in the position toward changes in ownership of its stock, where its charter and the general laws have put it. The Legislature could not have meant it to be unlawful or criminal for a corporation to enter upon

its stock books a transfer which it did not prohibit the seller from making, or the purchaser from taking. By registering such transfers, and thereafter recognizing the rights of the purchaser, the corporation does not "unite" with him in any of the ways, nor for any of the purposes, nor with any of the results, described in the paragraph. It does not "unite" with him at all. It merely accepts an an accomplished fact a transaction between others, not prohibited by any statute, and in which it has taken no part.

Furthermore, even in cases falling within the State Anti-Trust Act, equity would have no jurisdiction. Every disobedience of the act is made by it a crime, and the remedies are specified in the act. They are:

When the violator is a natural person, fine and imprisonment; when the violator is a corporation, for some violations fines and for others forfeiture of franchises; prohibition to the State courts to enforce claims growing out of violations. No right to injunction is given by the act. It is well established that, in absence of statute, an injunction will not issue to restrain the commission of a crime.

The Act of 1874.

[For the words of this act see p. 71.]

This act prohibits certain specifically and accurately designated persons from doing certain specifically and accurately described things with certain other specifically and accurately described persons.

The persons *with* whom the specified things are prohibited to be done all belong to a single, well-known and well-understood class, always able to be identified with perfect certainty, viz., *railroad corporations.*

The persons *by* whom the specified things are prohibited to be done all belong to one or another of the following well-known and well-understood classes, also able to be identified with perfect certainty, viz. :

(a) Railroad corporations.

(b) Lessees of railroad corporations.

(c) Purchasers of railroad corporations.

(d) Managers of railroad corporations.

(e) Officers of railroad corporations.

The things which the act prohibits also fall into three well-known, well-understood, and always easily recognizable classes, viz. :

(a) To *consolidate* the stock, property or franchises of one railroad corporation with another railroad corporation having a parallel or competing line.

(b) To *lease or purchase* the works or franchises of any other corporation having a parallel or competing line.

(c) To *control in any way*, any other railroad corporation having a parallel or competing line.

The Act of 1881.

[For the words of this act see p. 71.]

Probably the Act of 1881 is rightfully to be regarded as an intended revision of the Act of 1874, and, consequently, as a supersession and implied repeal of the earlier act. It revised and consolidated the existing laws upon the subjects treated, and enlarged their scope.

The changes in substance made by the Act of 1881, are:

(a) The *persons* prohibited are *reduced* to a single class, viz., *railroad corporations.*

(b) The *things* prohibited are *enlarged* to include acquisition or control of the *stock or property* of a railroad corporation which owns or controls a parallel or competing line.

But assuming that both acts are in force, and that the later one has merely enlarged the earlier, in the matters where their substance differs, neither is applicable to this case.

To make either applicable, one of the classes of persons prohibited by the acts from doing the things specified in the acts must have done one or more of those specified things.

Both conditions must concur or the acts do not apply.

The things prohibited to be done are all, in themselves, matters of ordinary business, and absolutely harmless. In themselves, they are even commendable, and favorable to the public interest, because they encourage and stimulate the use of private capital for the creation and operation of the transportation facilities on which the material life of the country absolutely depends. If any feature of the public policy of the country has been definitely established, it is, that the transportation systems should be created and operated with private capital. To attract capital, the investment must be made readily salable and transferable. Few would knowingly put their means into property of a form that could not be freely sold. This fact has always been well understood by all legis-

latures dealing with the subject, and it has been settled usage in all the states to facilitate, rather than to hinder, transfers of railway investments, whether such transfers take the form of leases, deeds or consolidations of properties, or sales of corporate securities. Furthermore, the policy of all States, including the State of Minnesota, has always favored large aggregations of railway properties and securities. From the beginning of legislation on these subjects in territorial times, up to the present, the State of Minnesota has provided all legal facilities for aggregations of railway mileage big enough to extend throughout the country, and for concentrating the entire capital stock of the biggest system in the hands of a single person, with the possible exception of one share for each director, to qualify him for office. Even that exception is improbable. Not a line nor a letter has ever appeared in a Minnesota statute showing the smallest desire of the Legislature to favor the dispersion of railway ownership or investments, or even hinting that a limit on the amount of stock or bonds of railways held by a single owner might be for public advantage.

These acts of 1874 and 1881 must, therefore, be confined, in their restrictive effect, to such limitations on transfers of railway properties and securities as they actually contain, leaving all other transfers of railway stocks or properties to the same freedom that they have always been accorded by the settled policy of the State.

If the persons specified in the acts do things not enumerated therein, or if any persons *not* specified in the acts do things enumerated therein, in either case the acts do not apply, and the things done are lawful.

It is not claimed here that any officer of the North-

ern Pacific Railway Company is also an officer of the Great Northern Railway Company, nor that either railway company has leased or purchased any property from the other, or any security issued by it, or exercises any control over it, or its property or franchises. There is no evidence that either Northern Pacific or Great Northern has done any act connected with any matter of which the State complains, except to enter upon its transfer books transfers of shares to the Securities Company, or to persons designated by it, that the owners of record have directed to be made. Such entries of transfers were required by the charter and by-laws of each company.

Northen Pacific and Great Northern have not, either formally or informally, consolidated their stocks, properties or franchises. Each corporation, each item of its property or franchises, each share of its corporate stock, is as separate and distinct from those of the other as they have ever been. Consequently, neither of the two railway companies has done any of the things forbidden by the Acts of 1874 and 1881.

If Securities Company be not one of the persons designated in the acts, or if it has not done some of the things prohibited by the acts, in either case the acts do not apply to what has been done.

Firstly, the prohibition of the acts is exclusively directed at *railroad* corporations, *managers* of *railroad* corporations, *officers* of *railroad* corporations, *purchasers and lessees* of *railroad* corporations.

Securities Company is clearly not an officer of any railroad corporation, nor the purchaser or lessee of any, or of the property of any. It is not the manager of any railroad corporation. It is not a railroad corporation itself.

The Securities Company being a corporation, its character and the nature of its powers are to be ascertained from its charter; *i. e.*, from the Certificate of Incorporation. The powers conferred on this company, by its Certificate of Incorporation, and by the laws of the State of New Jersey, are limited to buying, owning, selling, voting upon and collecting the revenue from the securities of other companies; to aiding in any manner any other company whose securities it holds; to doing any acts or things designed to protect, preserve, improve or enhance the value of any such securities held by it; and to holding such real or personal property as may be necessary for the transaction of its business. The certificate does not empower it to own, hold or manage railways, mines, factories, stores, or farms, nor to direct the management of any other company. There is no evidence that it has ever claimed or sought to exercise any such power. On the contrary, the letter written by Mr. Hill to an enquiring stockholder of Great Northern, on November 30, 1901, and before any suit was brought against the company by the State, expressly disclaimed the possession of any such power.

The general words of paragraph 4 of the enumeration of powers:

> "To aid in any manner any corporation or association of whose bonds, evidences of indebtedness, or stock, are held by the corporation; and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds, or other evidences of indebtedness, or securities or stock,"

were not meant to, and do not, empower Securities Company to engage in any class of business materially different from that specifically described in the

preceding subdivision of the same article. They merely empower it to do such acts as advancing money, endorsing and guaranteeing paper, becoming surety, and the like. The power to hold real and personal property was also meant to be, and construed with the slightest degree of fairness is, limited to such as the transactions of the company's business, specified in the first four subdivisions of Article 3, should make necessary or convenient; such as office buildings and property acquired in legal proceedings for collection of indebtedness owing to the company. The Securities Company is, therefore, not a "Railroad Corporation," but a mere *financial company*, having no power or authority save such as are commonly held and exercised by financial companies the world over.

While the term "Railroad Corporation" has probably never been the subject of legislative definition, it has long been in common use, and its meaning has, from the beginning of its use, been perfectly well understood. It is employed to designate corporations that own or operate railroads, or both; and is applicable to such only.

The ownership of stock in a company that owns or operates railroads does not make its owner a "Railroad Corporation." Nobody would ever think of designating a stockholder in a banking company a "Banking Corporation," nor a stockholder in an insurance company an "Insurance Corporation," even if the stockholder happened to be a corporation. No more is Securities Company a "Manager" of railroad corporations. This term, as used in connection with railroads, has also been well understood since long before 1881, or even 1874. It has never been used to describe the stockholders of a railroad company, or any

fraction of them, whether major or minor. A thousand persons, together holding a majority, or even all, of the stock of a corporation, would never be designated the company's "Managers." They would always be spoken of as its "stockholders." The same would be as true of a single person or company that happened to own a majority. He or it would still be called "stockholder" and not "Manager."

In Pullman's Palace Car Co. vs. Mo. Pac. Ry. Co., this Court expressly recognized that fact, and said: "In a sense the stockholders of a corporation own its property, but they are not managers of its business."

The sense in which the Legislature used the term "managers of any railroad corporation," in the Act of 1874, is shown by one of the things required to be declared in articles incorporating such companies under the general laws. Since the beginning of the state's existence, it has been necessary to set forth in such articles: "The names of the first board of directors, *and in* "*what officers or persons the government of the corpora-*" *tion and the management of its affairs shall be vested,*" *and when the same shall be elected*" (*Gen. Stats. 1866, Chap. 34, Sec. 3*).

The "managers" of any corporation must, wherever used, mean "the officers and persons in whom the "management of its affairs are vested," and, in corporations formed under the general laws, these can never be the stockholders; for they are to be elected; and the term "election" could not apply to stockholders.

Northern Pacific and Great Northern were incorporated by special laws; and each charter expressly designates who shall be the "managers" of the corporation. They are not the stockholders in either

case. On this point, the Northern Pacific charter reads:

> "All of the affairs of said company shall be managed by a board of directors, who shall be stockholders, and who are hereby invested with all the powers of the corporation, save as hereinafter provided" (Record, p. 1145, fol. 4563).

The Great Northern charter provides:

> "And all the affairs and business of said company shall be conducted by, or under the direction of the board of directors, and they are authorized, for the purposes specified in this act, to make and establish regulations and By-Laws, and to do all things necessary to be done, and not inconsistent with the Constitution and laws of the United States, or with the laws of this territory, or this act."
>
> Ev., p. 1100, fol. 4381.

Every question in this case should be considered, without mental confusion about what has been done. That has been simply this:

The Northern Securities Company being owner of a majority of Northern Pacific stock, but being only one out of about 400 Northern Pacific stockholders, proceeded to buy a majority of Great Northern stock from about 1,200 out of about 1,900 individual holders of it. Whatever "putting together" of the two stocks has been done, has been exclusively by the Securities Company. The only "putting together" of the two stocks has been their purchase by one owner. Neither railroad company, nor any board of officers of either, has put these stocks together, because none of them did any of the buying, which alone could be the unlawful act, if any such were here committed. Furthermore, if it could be conceived, that a sale of the stocks of two competing companies to a

single interest, could not lawfully be promoted by the managers of the companies, still, when the sale had actually been made, the title of the purchaser would not be invalid by reason of such promotion, if the buyer were not prohibited by law from owning them in any way.

Therefore, viewed from any possible standpoint, none of the "managers" of either of these railway companies has consolidated any of their stock, property or franchises.

Purchase and ownership of part of the stock in a corporation, even the majority, cannot be purchase or ownership of the corporation itself. If it could, what would become of the interests represented by the residue of the stock? What would the minority own? The whole body of stockholders, and a part of them less than the whole, could not both own the corporation at the same time. Either the majority stock does not own the corporation, or the minority owns nothing in it. A "purchase" is necessarily followed by ownership. Any transaction not so resulting could not be a "purchase"; it must be something else.

If Northern Securities Company now owns the Northern Pacific corporation, what has become of the interests of the minority stockholders in that corporation? How and when did they lose their rights? They must have lost their rights, if Northern Securities has become owner of the corporation.

When the Northern Securities Company bought a majority of Northern Pacific stock, it undoubtedly purchased control of the Northern Pacific corporation; but it did not purchase the corporation itself.

A purchase of a corporation could be made only by purchase of the franchises from the incorporators,

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before the issuance of stock, or by purchase of the entire capital stock, when issued.

The Minnesota Statutes name the purchaser of the *corporation*. They do not mention control any more than stockholders. If the Legislature had meant stockholders, or meant control of corporations, it would have said so.

There has never been any usage of speech in this country that has extended the meaning of the term "purchaser of a corporation" to the buyer of part of the corporation's stock. The term may, in some instances, have been applied in that way; but, if so, they have been instances of mere loose and colloquial expression, where the correct use of words was neither important nor attempted. Such mere colloquialisms are not to be considered in studying the meaning of words. They do not fix their meaning for any purpose. Especially, they do not fix it, when the question is that of the construction of statutes. It cannot be presumed that the Legislature has regarded them, in selecting the language for its enactments.

Clearly, therefore, the Securities Company is neither a railroad corporation, nor an officer, manager, lessee, nor purchaser of any. Being neither of these, it is not one of those who have been forbidden by the acts of 1874 and 1881 to do the things specified in those acts. The acts do not apply to it. Other classes of persons have not been prohibited from doing these things, and, therefore, may continue to do any of them at pleasure.

The fact that Securities Company held the majority of the stock of Northern Pacific, when it bought enough Great Northern stock to give it a majority of that also, makes no difference. Ownership by it of a majority, or even of all, the stock of the Northern Pacific could

not make it the Northern Pacific Railway Company, nor a railroad corporation at all. The Northern Pacific Railway Company has continued to own and operate the Northern Pacific Railway as before. It remains the "Railroad Corporation." A corporation and its stockholders are absolutely different entities and personalities, under all circumstances, regardless of the number of stockholders, or how much any one of them holds. Even if they were but a solitary stockholder, this would be just as true; his act, however ample in form, would not be the act of the corporation, but of *himself*, as an individual. This has often been held, and no case has been found that dissents from it. In *Baldwin vs. Canfield, 26 Minn., 43*, the Supreme Court of the State of Minnesota held that the owner of the entire capital stock of a corporation is so distinct from the corporation itself, that his deed of the real property is wholly inoperative, and passes no interest.

In *Pullman's Palace Car Co. vs. Mo. Pac. Ry. Co., 115 U. S., 585*, the parties had made a contract whereby the car company should have the right to furnish, for the use of the railway company, drawing-room, or parlor and sleeping cars, on all passenger trains of the railway company, and over its entire line of railway, "*and on all roads which it controls, or may hereafter control, by ownership, lease or otherwise.*" With this contract in force, the Mo. Pac. Ry. Co. acquired all but 1,195 of the total 220,682 shares of the stock of the Iron Mountain Ry. Co., and the two roads were operated under the same general management. This Court held that these facts did not give the Mo. Pac. Ry. Co. "control" over the railways of the Iron Mountain Ry. Co.

Among other things, the Court said :

"We are also of opinion that the railroad of the St. L., I. M. & S. is not controlled by the present M. P. in such a way as to require that company to haul the Pullman cars over it, if the contract is binding on the new company to the same extent as it would be on the old." * * *

"Confessedly, the St. L., I. M. & S. keeps its own corporate organization. It operates its own road. It has its own officers and makes its own bargains. The Mo. Pac. owns all, or nearly all, its stock, and in that way can determine who shall constitute its board of directors, but there the power of that company over the management stops. The board, when elected, has controlling authority, and for its doings is not necessarily answerable to the Mo. Pac. Co. The two roads are substantially owned by the same persons and operated in the same interest, but that of the St. L., I. M. Co. is, in no legal sense, controlled by the Mo. P. Co."

* * * * * *

"The Mo. P. has bought the stock of the St. L. & I. M., and has effected a satisfactory election of directors, but that is all. *It has all the advantages of a control of the road, but that is not, in law, the control itself.* Practically it may control the company, but the company alone controls the road. *In a sense, the stockholders of a corporotion own its property, but they are not the managers of its business or in the immediate control of its affairs.* Ordinarily, they elect the governing body of the corporation, and that body controls its property. The directors now control the road through their own agents and executive officers, and these agents and officers are in no way under the direction of the Mo. P. Co. * * * Its rights and powers are those of a stockholder only. It is not the corporation, in the sense of that term as applied to the management of the corporate business, or the control of the corporate property" (pp. 596-7).

In the subsequent case, *Porter vs. Pittsburg Bessemer Steel Co., 120 U. S., 649*, the same Court said:

> "The mere fact that Crawford owns a majority of the stock does not give him legal control of the company; nor from such ownership can be drawn the legal inference that he dominated the Board of Directors."
>
> The Court cited Pullman's Palace Car Co. vs. Mo. Pac. Ry. Co. with approval.

When, therefore, a statute merely prohibits the doing of specified acts by a corporation, the prohibition cannot extend to the stockholders, because they are persons totally distinct from the corporation.

This proposition has also been established by the this Court in two other cases; in one of which the Court considered these very statutes of the State of Minnesota, and in the other a provision of the constitution of the State of Kentucky, identical with the Minnesota statutes in substance and almost in words.

> Pearsall vs. Great Northern Ry. Co., 161 U. S., 646.
>
> State of Kentucky vs. Louisville & Nashville Ry. Co., 161 U. S., 676.

The Pearsall case was a suit by a stockholder of the Great Northern Railway Company, against the company, to restrain it from carrying out a contract made by its president, on the one part, and the representatives of the securities of the Northern Pacific Railroad Company, then insolvent and in the hands of receivers, on the other. By the terms of the contract the mortgages of the Northern Pacific Company were to be foreclosed and the properties turned over to a new company, which should issue its own bonds and stocks in payment therefor. The bonds were to be guaranteed by the Great Northern Railway Company, in con-

sideration for which one-half the new stock was to be transferred to the stockholders of the latter or to a trustee for their benefit.

The Great Northern Railway Company was incorporated by special acts of Legislature of Minnesota, that expressly authorized it to consolidate with any other railroad company withing or without the State; and, by inference, to do preparatory acts for such consolidation, such as the purchase of the other company's stock.

The terms of the contract admitted a construction, that the one-half of the new stock going to the stockholders of the Great Northern Railway Company, was to go to them, not as individuals and by separate ownership, but collectively and as a body, so that the owners of this stock would always be the holders of Great Northern stock, for the time being, in proportion to their respective holdings of the latter stock. Such an arrangement would necessarily be a direct ownership of the new stock by the Great Northern Railway Company itself. The Court placed that construction on the contract, and consequently regarded it as an expressed sale to the latter company.

In addition, the entire consideration for the transfer of the stock was to be paid by the Great Northern Railway Company itself. Under the long established rule of law, that where the price of a purchase is paid by one man, and the title is taken in the name of a third, the payer of the price becomes the real owner of the property, the ownership of the stock would vest in the Great Northern Railway Company, by necessary implication, even if the contract could not be deemed so to expressly provide. Either way, the owner of the stock would be the Great Northern Railway

Company, as a corporation. The dominating question in the case was whether the subsequent general laws did, or constitutionally could, repeal the prior special charter. This question the decision of the Court answered in the affirmative; but also said:

> "*Doubtless these stockholders could legally acquire, by individual purchase, a majority, and even the whole, of the stock of the reorganized company; and thus possibly obtain its ultimate control; but the companies would still remain separate corporations, with no interest, as such, in common.*"
> (p. 671).

Shortly after the decision of the Pearsall case, and at the same term of court, the *State of Kentucky vs. Louisville and Nashville Rd. Co.*, was decided.

This suit was brought by the State which had incorporated the defendant, to restrain the latter from purchasing, at foreclosure sale, the railway of another company, deemed parallel and competing, lying in Kentucky, and in one or more adjacent States.

The decision was for the State; but, in course of its opinion, the Court said:

> "*It is true, as was observed in Pearsall vs. Great Northern Railway Company, that the stockholders of the Louisville & Nashville Rd. Co. may individually become the purchasers of the Chesapeake Co., at a judicial sale, and may organize a new corporation, but it would still be a corporation separate and distinct from that of the Louisville & Nashville Company. The inhibition of the Constitution is not against the sale to individuals, though they may chance to be stockholders in a competing line; but against the acquisition by a railway, in any form, of a parallel and competing line.*"
> P. 693.

Admittedly, the proposition contained in the two quotations from the Pearsall case and the Louisville

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and Nashville case was not indispensable to the decision of the cases. Still, these expressions were much more than mere dicta, and are entitled to all the weight of solemn judicial declarations of a legal principle relating to the State statutes.

In the first place, the announcement of the rule was deliberately repeated by the Court. Had it been stated but once—in the Pearsall case, for instance—and been omitted from the later case, there might be ground for saying, that it was the mere personal view of the eminent Judge who spoke for the majority, which the concurring Judges are not presumed to have noticed, and which they were permitted to pass over in silence.

The chief difference between those parts of a Court's opinion that state the propositions necessary for the support of the judgment reached and the rest of the document, as rules for subsequent decision, is, that the former parts are assumed to have had the attention of all concurring Judges, while the latter may have escaped the notice of any save the writer of the opinion herself. In this instance, that assumption could not possibly be true. The very fact and the circumstance of the repetition must have involved the attention of all the Judges, and the further fact that none expressed disagreement from the proposition in either case, shows that all must have assented to it, while some did dissent from other parts of the opinions and judgments pronounced. Such evident care on the part of the Court to suggest and reiterate that the State prohibitions are limited to the single designated class of corporations, and do not extend to natural persons or other corporations, must have come from the Court's desire to state in a complete way and fully the

rule of law it was applying to the facts in the respective cases. The Court might have cut the complete rule defining legal capacity to buy railway properties and stocks into fragments and selected only the part deemed by it necessary for the decision of the case, leaving the other parts to be discovered at their peril by those thereafter contemplating such purchases. The Court did not proceed in that way, but took care to announce the new rule, controlling matters of tremendous business and financial consequence, in a form much more valuable to the public, as a guide for what might and might not be done.

The Pearsall case and the Louisville and Nashville case are direct authorities, that such purchases of stocks in railroad corporations, as have been made here, are not forbidden by the Minnesota Acts of 1874 and 1881.

These cases say that the stockholders of one corporation may acquire the stock—and all the stock—of a competing corporation, by "individual purchases." What kind of purchases are those? are they more than purchases of shares which shall be owned by the purchasing stockholder, and not by the whole body of stockholders?

The number of stockholders in a railroad corporation, who buy the property or securities of another, cannot be important. This Court attached no importance to it. The Court did not stop to inquire the number of Great Northern stockholders before saying that they might lawfully buy Northern Pacific stock, nor how many Louisville and Nashville stockholders there were before saying that they might buy the railways of the Chesapeake Co. For all that appeared in either case there may not have been five stockholders in either the

Great Northern or in Louisville and Nashville. Neither can it be important whether the stockholders are natural persons or corporations.

The number of stockholders or their character was not the question there and is not the question here. The question both there and here is, whether statutes forbidding "railroad corporations" to do specified things also forbid their stockholders to do them as individuals. No answer different from what the Court gave could be reasonable. A command to a designated person, or to a designated class of persons, is solely a command to that person or that class, and not one to somebody else.

The State of Pennsylvania was a pioneer in this sort of railroad regulation. There the prohibition was placed in the Constitution. Its words have been almost literally copied into the Acts of Minnesota and the Constitution of Kentucky. Two cases arose under the Pennsylvania inhibition very soon after it went into effect.

Commonwealth vs. South Penn. R. R. Co., 1 P. C. C. Rep., 214; affirmed 7 At. Rep., 368.

Commonwealth vs. Beach Creek R. R. Co., 1 Penn. C. C., 223; affirmed 7 At. Rep., 374.

Neither of these cases antagonizes what the Supreme Court said in the Pearsall case, or in the Louisville and Nashville case, nor any proposition advanced by the defendants here. On the other hand, while those cases went off on grounds not existing in this case, the Pennsylvania Courts plainly recognize that a corporation is distinct from its stockholders, under such enactments.

In the South Penn. case a railroad had been projected and put under construction, to run from Pittsburgh east, and, when completed, to be operated in competition with the Pennsylvania Railroad through the same general territory, comprising the whole southern part of the State.

The officers of the Pennsylvania Railroad Company made an agreement with a representative of the stock and bond holdings in the South Penn. Co., whereby all the stock of that company was to be transferred, and to be paid for in bonds to be guaranteed by the Pennsylvania R. R. Co.

The report of the case does not clearly show to whom the South Penn. stock was to be transferred, nor the company whose bonds were to be delivered in payment. The real buyer and paymaster, however, was indisputably the Pennsylvania Railroad Co.

The managers of both sides of the transaction admitted, as witnesses, that the purpose of the trade was to relieve the Pennsylvania Railroad from the competition of the South Penn.

The Court took precisely the position afterward taken by this Court in the Pearsall case; viz., that it mattered not to what name the South Penn. stock might be transferred, in carrying out the trade. Payment of the consideration by the Pennsylvania R. R. Co. would give that company ownership of the stock and the right to manage the same, and the certificate holder would merely be its trustee. Consequently, the case stood as if the stock were to be transferred directly to the Pennsylvania Railroad Company. The case was one of the purchase by one company of all the stock of another owning a parallel and competing line. The Court distinguished

the South Penn. case from the *Pullman's Palace Car Co. Mo. Pac. Ry. Co.*, then recently decided, by holding that what the Pennsylvania Constitution forbids is the control of a *company;* not the control of a *railroad.*

The Court reasoned a *railway* is controlled by the company that owns it, and not by that company's stockholders; but the stockholders, while not controlling the railway, do control the company that controls the railway. The correctness of the decision in the Pullman Palace Car case was not denied.

The Beech Creek case was precisely similar to the South Pennsylvania case in everything going to the substance.

Again, the stock of a railway parallel and competing with portions of the Pennsylvania Railroad's system, was to be transferred to a third party, for a consideration coming exclusively from the Pennsylvania Railroad Company. As before, the Court held that the source of the consideration fixes the ownership of a thing bought. This point being established, the invalidity of the purchase followed as a matter of necessity.

There is not a word, however, in the opinion of either of these Pennsylvania cases, hinting that the stockholders of the Pennsylvania Railroad Company could not have bought the stocks which the company itself was held incapable of buying. In the Beech Creek case it appeared that the Pennsylvania Railroad Company owned a controlling interest in the stock of the Northern Central, which was to take the transfer of the Beech Creek stock; but the Court ignored that fact in reaching its conclusions. It was unimportant, because the Northern Central would not, in law, have been the

purchaser. Besides, the Court expressly conceded the distinction between a corporation and its stockholders, by conceding that the latter do not control the property of the former.

The Court said nothing indicating that ownership of a controlling interest in the stock of the transferee, by the Pennsylvania Railroad Company, would taint the transaction. The choice of a totally different ground on which to place its decision shows that the Court gave no weight to ownership of the transferee's stock. If the admitted ownership of that stock by the Pennsylvania Railroad Company could have cut any figure, the Court would undoubtedly have made that fact one of the grounds of its decision, but it did not.

A more recent case in the Supreme Court of that State, again emphasized the distinction between corporations and their stockholders, under statutes of this class.

Commonwealth vs. New York, Lake Erie and Western Ry. Co., 132 Pa. St., 591.

Information exhibited by Attorney General for *quo warranto* directed to defendant, to forfeit title to certain coal lands in Elk County claimed to be held in violation of the company's charter and the State law. Defendant was a corporation of the State of New York. A Pennsylvania statute, passed in 1855, enacted: "That no corporation other than such as shall have "been incorporated under the laws of this state, nor "shall any foreign government, potentate, or power, "hereafter acquire and hold any real estate within this "commonwealth, directly in the coporate name, or by "or through any trustee or device whatsoever, unless "specially authorized to hold such property by the "laws of this commonwealth."

With this act in force, the President of the Erie Railway Company bought for the company large tracts of coal lands lying in the State of Pennsylvania, which he paid for with the company's money, and caused to be conveyed to himself as trustee. Afterward, to avoid the operation of the act of 1855, the company bought the charter of a Pennsylvania mining corporation authorized by the laws of the State to own lands, retained for itself all the shares except a few needed for qualifying directors, and caused the title to the lands to be conveyed to the mining company.

Held, This was not a "device" to enable the railroad company to hold title to the lands in spite of the statute, nor in any way unlawful.

In the State of Georgia the Constitution contains the following clause:

> "The General Assembly of this state shall have no power to authorize any corporation to buy shares or stock in any other corporation in this state or elsewhere, or to make any contract or agreement whatever with any such corporation which may have the effect, or be intended to have the effect, to defeat or lessen competition in their respective businesses or to encourage monopoly; and all such contracts and agreements shall be illegal and void."
>
> Const. Ga., Art. 4, Sec. 2, Par. 4.

With this provision in force, a majority of the stock of the Central Railroad and Banking Co. of Georgia, owning and operating about 2,400 miles of railway in that State and steamship lines between the seaports of Georgia and those of the Eastern Atlantic States, was acquired by the Richmond Terminal Co., a corporation of the State of Virginia.

The Terminal Co. at the same time owned a majority of the stocks of the Richmond and Danville R. R.

Co. and the East Tennessee, Virginia and Georgia R. R. Co., corporations of States other than Georgia, but operating railways in that State and elsewhere in competition with the transportation lines of the Central of Georgia. The latter company became insolvent and a receiver of its properties was appointed by the United States Circuit Court for the Southern District of Georgia.

That Court ordered the Receiver to convene a meeting of the company's stockholders for specified corporate purposes, and at the meeting to exclude the stock acquired by the Richmond Terminal Co. from voting, on the ground that it had been acquired, and was being owned, by the Terminal Co. in violation of the above quoted clause of the Georgia Constitution.

On behalf of this stock, a motion was made before Mr. District Judge SPEER to vacate the order of exclusion; but it was denied, his Honor, among other things, saying:

> "It is not difficult to perceive that a combination of corporations which produces a condition so inequitable cannot be sanctioned by the law. We believe that transactions of this character are within the spirit, if not within the letter, of the Act of Congress known as the 'Sherman Anti-Trust Law.' It certainly is, as we have seen, obnoxious to the law of Georgia, and it was certainly as obnoxious to the common law" (Opinion, p. 346).
>
> *Clarke vs. Terminal Railway & Warehouse Co., 50 Fed. Rep., 338.*

The matter came before Mr. Justice JACKSON, on final hearing, who disapproved of Judge SPEER's ruling in this particular, and, in the course of an oral opinion, taken down by a stenographer for counsel in the case, said:

"The question under consideration is whether that injunction on the 42,200 shares held by the Central Trust Company, under the circumstances familiar to you, and which I will recite in a moment, whether those shares are entitled to vote in an election for directors of the Central Railroad Company. Certain individuals forming a syndicate buy up 40,000 shares. The Terminal Company organized, and chartered regularly by a sister state, with express authority to purchase and hold stocks and bonds in any of the railroads with the designated territory, within the designated state, has purchased 42,200 shares. Is there any law of Georgia that forbids that purchase? Was there any constitutional provision of Georgia that nullified that purchase, or rendered it illegal—a purchase made not in the State of Georgia, a contract made not with any Georgia corporation or Georgia individuals? *Where is the constitutional provision of the State of Georgia, or its power either by legislation or constitutional provision, to prohibit a lawfully organized corporation created by the State of Virginia, with express power to own and purchase stocks and bonds, where is the power in the State of Georgia, in her legislature or her constitution, to prohibit the purchase of that lawful property, issued and created under our own laws, and put out before the world as salable? It does not exist.* I concede that the State of Georgia may put in limitations and restrictions upon corporations in respect to the amount of property they shall acquire; in respect to the amount of stock they may authorize a corporation to issue; *but I say that when that corporation has issued that stock, when it goes abroad as property, there is no power in this land that can deny to the owner the right to sell it, nor deny to the individual the right to buy it; and, if a corporation is created by any state with power to own and purchase stock, that that corporctian is entitled to buy that stock, and that Georgia in her constitution and her legislature could not prohibit it.*"

* * * * * *

"Did Georgia by her constitution undertake to pass upon the legality and validity of contracts made in Virginia, made in the State of New York?

Certainly not. If she did, she exceeded her power and jurisdiction."

* * * * * *

"For Georgia law cannot reach the transaction, Georgia law cannot deal with these stocks and inhibit their purchase and sale, and the only question in this case that ever would have given trouble would have been the power of that corporation, the Terminal Company and the North Carolina Company to have held and owned such steck, but they each had the power of the sovereigns that created them to purchase, abide and hold these stocks, and there is nothing in the constitution of Georgia or its laws to deny them their rights and interests as such holders in this property."

From the final decree an appeal was taken to the Circuit Court of Appeals, by which it was affirmed.

Same case, 62 Fed. Rep., 328.

In its opinion, the Court said:

"It is settled that the powers of corporations are derived from the sovereign that creates them. When they enter another jurisdiction and make contracts, their contracts are governed by the laws of the state in which the contracts are made. It is not shown here that any contract affecting this stock was made by these parties in Georgia, or with any Georgia corporation. It is contended that this stock should not be allowed to vote, because it is held, or its voting power is held, by another corporation which, through this stock, and its other holdings of corporations stocks, does, or may and purposes to, so control the Central Company's system and its competing system, as to 'lessen competition in their respective businesses, or to encourage monopoly.' The logical, ultimate and practical results of this contention is, that any stackholder in two Georgia corporations, or in one Georgia corporation and a corporation of another state, which may compete for interstate traffic, to be carried out of or into the State of Georgia, cannot vote his stock in both corporations; and if only one is a Georgia

corporation, he cannot vote his stock in that corporation. We say 'any stockholder,' because the logic of the contention applies as well to holders who are natural persons, as to corporations not created by the General Assembly of Georgia. * * *

"To those only very partially cognizant of the state of stockholdings in this country, the contention seems to be revolutionary. We need not question the power of Georgia to so provide, but we must inquire, has she so provided? Has the language of the constitution such self-acting, affirmative force, as to require a Court of Chancery to impose the exercise of the voting power of this stock by its present holders, at the suit of these applicants, in the case they here made? We conclude that it has not such force."

P. 334.

This case derives additional interest, if not importance, from the fact that Mr. District Justice SPEER invoked the Federal Anti-Trust Act, as well as the local constitution; and that the suggestion met no assent from either Mr. Justice JACKSON or the Circuit Court of Appeals.

It being established that the only parties here to whom the inhibitions of the Acts of 1874 and 1881 could apply are the two railway companies, and that neither has been an actor in these matters, it is unnecessary to inquire whether anybody, even the Securities Company itself, has done any of the things specified in the statutes. Still none of them has been done.

None of the parties has leased or purchased any railway or other property, or any franchise, from either railway company. No railways or other properties of the two railway companies, nor any of their franchises, have ever been consolidated. Each railway company's holdings of these things are separate

and distinct from those of the other, as they ever have been, at any time, or as they possibly could be. Neither the whole nor any part of their capital stock has been consolidated.

What did the Minnesota Legislature mean by the term "consolidation," as used in these acts?

When the acts were passed, the term had already been a long time in use, and had come to be well understood. It had been used, by the same Legislature in 1858, and again in 1866, to designate a process by which previously separate and distict corporate bodies are united in such a manner that a single body shall result. The old ones disappeared and the new one took their place. The process is prescribed and the effect specified. The statute of 1858, carried forward into the revised general statutes of 1866, was as follows:

> SEC. 36. Whenever the lines of railroad of any railroad corporation, whether organized under this title, or by virtue of a special charter, or any portion of such lines, have been or may be constructed so as to admit the passage of freight or passenger cars over any two or more of such roads, continuously, without break or interruption, *such corporations may consolidate themselves into a single corporation*, in the manner following:
>
> FIRST. Any two or more railroad corporations may, by their directors, enter into an agreement, under the corporate seal of each, for the consolidation of the said corporations, prescribing the terms and conditions thereof; the mode of carrying the same into effect; *the name of the new corporation;* the names and places of residence, and number of directors thereof; the time and place of holding the first election of directors; the number of shares of capital stock in the *new corporation;* the amount of such shares, which shall not be less than one hundred dollars; the manner of con-

verting the shares of capital stock of each of said two or more corporations into the shares of such *new corporation;* the manner of compensating stockholders in each of the *old corporations*, who refuse to convert their stock into the stock of the *new corporation;* with such other details as they may deem necessary to perfect the *consolidation* of such corporations; and such *new corporation* shall possess all the powers, rights and franchises conferred on each corporation, and be subject to all the restrictions, and perform all the duties, imposed by the provisions of this title; provided, that all stockholders in either of such corporations, who refuse to convert their stock into the stock of such *new corporation*, shall be paid at least par value for each of the shares so held by them, if they so require, previous to the consummation of said consolidation.

SECOND. Such agreement of the directors shall not be deemed to be the agreement of the said *old corporations*, until after it has been submitted to the stockholders of each of said corporations, separately, at a meeting thereof, to be called upon a notice of at least 30 days, specifying the time and place of such meeting, and the object thereof, to be addressed to each of such stockholders, when their place of residence is known, and deposited in the post-office, and published for at least three successive weeks in one newspaper, in at least one of the cities or towns in which each of said corporations has its principal place of business, and is sanctioned by such stockholders, by a vote of at least two-thirds in amount of the stockholders present at such meeting voting by ballot, either in person or by proxy, each share of capital stock being entitled to one vote; and when such agreement of the directors is so sanctioned by each of the meetings of the stockholders separately, it shall be deemed the agreement of the said old corporations.

SEC. 37. Upon making the agreement mentioned in the preceding section, in the manner required therein, and filing a duplicate or counterpart thereof in the office of the secretary of state, the said old corporations shall be merged in the new corporation provided for in such agreement, to be known by the corporate name therein mentioned;

and the details of such agreement shall be carried into effect, as provided therein.

SEC. 38. Upon the election of the first board of directors of the corporation created by said agreement, the rights and franchises of each of said old corporations, their rights and interest in and to every species of property, real, personal and mixed, and things in action, shall be deemed to be transferred to and vested in such new corporation, without any other deed or transfer; and such new corporation shall hold and enjoy the same, together with the right of way, and all other rights of property, in the same manner, and to the same extent, as if the said old corporations had continued to retain the title and transact the business of such corporation; and the titles and real estate acquired by either of said old corporations shall not be deemed to revert or be impaired by means of anything in this title contained; *provided*, that all rights of creditors, and all liens upon the property of either of said old corporations, shall be preserved unimpaired; and all the debts, liabilities and duties of either company shall thenceforth attach to such new corporation, and be enforced against the same, to the same extent, and in the same manner, as if such debts, liabilities and duties had been originally incurred by it.

SEC. 39. Any railroad corporation heretofore or hereafter incorporated, whether under the provisions of this title or by special charter, may at any time and by means of subscription to the capital of any other corporation, or otherwise, aid such corporation in the construction of its railroad for the purpose of forming a connection of said last-mentioned road with the road owned by the corporation furnishing said aid; or any railroad corporation may lease or purchase any part or all of any railroad constructed by any other corporation whose lines of road are continuous or connected with its own upon such terms and conditions as may be agreed on; or any two or more railroad corporations whose lines are so connected may enter into any arrangement for their common benefit, consistent with and calculated to promote the objects for which they were created; *provided*, that no such aid shall be furnished, nor any purchase, lease or arrangement perfected until

a meeting of the stockholders of each of said corporations has been called by the directors thereof at such time and place and in such manner as they shall designate, and the stockholders of at least two-thirds of the stock of such corporation represented at such meeting in person or by proxy, and voting thereat, assented thereto.

Gen. Stats., 1866, Ch. 34, Secs. 36, 37, 38, 39.

These clauses were in force when the Act of 1874 was passed, which was as follows :

"SECTION 1. No railroad corporation, or the lessees, purchasers or managers of any railroad corportion, shall consolidate the stock, property or franchises of such corporation with, or in any way control any other railroad corporation owning or having under its control a parallel or competing line ; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line ; and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues."

No other form of "consolidation" had been mentioned in the State enactments. The term had not been applied, in any statute of the State, to any other mode of unifying control over two corporations. It was not used again by the Minnesota Legislature, in any public act, until the passage of the Act of 1881, in which Section 3 is the statute of that year on which the State here relies. That act is as follows :

"An act to authorize any railroad company to lease, purchase, or in any way become owner of, or to control, any other railroad corporation, *or to consolidate therewith.*"

SECTION 1. Any railroad corporation, either domestic or foreign, whether organized under a gen-

eral law, or by virtue of a special charter, may lease or purchase, or in any way become owner of, or hold the stock of, any other railroad corporation, when their respective railroads can be lawfully connected and operated together so as to constitute one continuous main line, with or without branches.

SECTION 2. Any railroad corporation, whether organized under a general law, or by virtue of a special charter, of the state or territory of Minnesota, or under the laws of any other state or territory, whose lines of railroad now or hereafter constructed, within or without the state, can be lawfully connected and operated together, to constitute one continuous main line, with or without branches, so as to admit the passage of trains over them without break or interruption, *may consolidate* their stock and franchises, upon such terms as may be agreed upon, *so as to become one corporation*, by any name by them selected.

Articles stating the terms of consolidation shall be approved by each corporation, by a vote of the stockholders owning a majority of the stock, in person or by proxy, at either a regular annual meeting thereof, or at a special meeting called for that purpose, by a notice of at least thirty (30) days, stating the object of such meeting, to be addressed to each of such stockholders, when their place of residence is known, and deposited in the post office and published for at least three (3) consecutive weeks in one newspaper, in at least one of the cities or towns in which each of said corporations has its principal business office, or by consent in writing of a majority of such stockholders annexed to such articles ; a copy of such articles of consolidation, and of the record of such approval, or of such consent, accompanied by lists of the stockholders of said corporation, and the number of shares held by each, duly certified by their respective presidents and secretaries, with the respective corporate seals thereto affixed of said corporations shall be filed for record in the office of the Secretary of State of this state, and of the State or States or Territories by or under whose laws the said corporations, parties to such articles of consolidation were created or exist, before any such consolida-

tion shall have any validity or effect. Upon the filing for record of said copies, *the said corporations shall become merged in the new corporation* provided for in said articles, to be known thereafter by the corporate name therein adopted, and shall, within this state, succeed to all the rights, powers, franchises, contracts, privileges, immunities, liabilities, obligations and duties, liabilities to or exemptions from taxation, commutations, property, real, personal, and mixed, and things in action, as fully in all respects as the same were possessed by such old corporation or corporations, at the time of such consolidation under the laws of this state ; and such *new corporation* shall hold and enjoy the same, and all and every part thereof, without impairment or change, as fully as if the said consolidation had not taken place. Provided that all rights of creditors, and all liens upon the property of either of said old corporations shall be preserved unimpaired, and all debts, liabilities and duties of either of said consolidating corporations shall thenceforth attach to said *new corporation*, and be enforceable to the same extent, and in the same manner as if such debts, liabilities, and duties had been originally incurred by it ; provided further, that all such corporations shall be subject to the laws of this state, and the jurisdiction of the courts of this state, in the same manner and to the same extent as domestic corporations.

SECTION 3. *No railroad corporation shall consolidate with, lease or purchase, or in any other way become owner of, or control, any other railroad corporation, or any stock, franchises, rights of property thereof, which owns or controls a parallel or competing line.*

Gen. Laws 1881, chap. 94.

In the year 1899, the subject was again treated by the Legislature, in the following act :

CHAPTER 229.

AN ACT TO AMEND SECTION ONE (1) OF CHAPTER NINETY-FOUR (94) OF THE GENERAL LAWS OF ONE THOUSAND EIGHT HUNDRED AND EIGHTY-ONE (1881) ENTITLED "AN ACT TO AUTHORIZE ANY RAILROAD COMPANY TO LEASE, PURCHASE, OF IN ANY WAY TO BECOME OWNER OF, OR TO CONTROL, OR ANY OTHER RAILROAD CORPORATION, OR TO CONSOLIDATE THEREWITH."

Be it enacted, etc.

SECTION I. Section 1 of Chapter 94 of the General Laws of 1881, being Section 2714, General Statutes 1894, is amended so as to read as follows:

SECTION I. Any railroad corporation, either domestic or foreign, whether organized under a general law, or by virtue of a special charter, may lease or purchase, or in any way become the owner of, or control, or hold the stock, of any other railroad corporation, when their respective railroads can be lawfully connected and operated together, so as to constitute one continuous main line, with or without branches, and in case such lease or purchase shall be made by a foreign corporation, such corporation shall have and possess the same rights, powers, and privileges, and be subject to the same duties, obligations and liabilities, in respect to the railroad so leased or purchased, as the corporation from which such lease or purchase shall have been made.

Provided further, that any railroad so purchasing or leasing shall be subject to any law of this State now in force, or hereafter enacted, relating to taxation of the property so leased or purchased.

Provided, in case such lease or purchase shall be made, or such ownership or control had, by a foreign corporation, the same shall not be deemed complete or effectual for any purpose, until such foreign corporation shall have first complied with all laws of this State pertaining to foreign corporations.

Provided further, that no railroad corporation shall consolidate with, lease, or purchase, or in any way become owner of or control, another railroad corporation, or any stock, franchises, rights, or property thereof, which owns or

controls a parallel or competing railroad, to and with the railroad owned or controlled or operated by such leasing or purchasing railroad corporation; and the question whether any such railroads are parallel or competing lines, shall, when demanded by the party complaining, be decided by a jury, as in other civil actions.

SECTION 2. This act shall take effect and be in force from and after its passage.

Approved April 15, 1889.

The process meant to be described in Section 3, of the Act of 1881, and in the last *proviso* of Section 1, of the Act of 1899, by the term "consolidated," must have been the same one described in, and regulated by the Act of 1881. There is no ground for assuming that any other process was in the legislative mind.

The "consolidation" meant by the Act of 1874 is the one provided for by the General Statutes of 1866.

The "consolidations" provided for by the General Statutes of 1866 and the Act of 1881 were practically identical. They were absolutely so in the feature that the old corporations passed out of existence, and a new one rose in their stead. In fact, it is impossible to imagine what other kind of process could be described as a "consolidation." The term necessarily carries with it the sense of a firm and indissoluble union. Properties, franchises, shares of stock in separate companies, can never be "consolidated" while each retains its identity. The word "consolidate" must have been used in a single and uniform sense in all parts of these laws. It does not mean one thing in one place, and another in another.

Northern Pacific shares and Great Northern shares never can be "consolidated" so long as they remain Northern Pacific and Great Northern. They can never

be "consolidated" until they cease to be Northern Pacific and Great Northern, and are replaced by something else. No such thing has ever been contemplated, much less done.

Shares in separate corporations are not "consolidated" by passing into the ownership of the same person. They are things as distinct as if they had remained in separate hands. The shares of Northern Pacific and Great Northern owned by Northern Securities are not tied together in any way. They are not even mortgaged or pledged. Any part of them or all may be sold at any time. There is not the least implied promise or duty, on the part of Securities Company, to anybody, to retain its ownership of the shares of either railway company for an instant. No amount of force could stretch the meaning of the word "consolidation" far enough to cover a holding of stocks in this way.

It must be remembered also that the holding by Securities Company in each railway company forms part only of the latter's entire stock. There are many other stockholders in each railway company.

If by acquisition of the majorities of Northern Pacific and Great Northern stock the Securities Company became a "railroad corporation," what railroad corporation did it become? The Northern Pacific? The Great Northern? Did it acquire any franchise previously held by either Northern Pacific or Great Northern?

If it did, and became either Northern Pacific or Great Northern, or both, what has become of the minority stock of the two railway companies? What does that represent? Anything different from what it did when this same majority was held by others? If

not, everything, in regard to the Northern Pacific and Great Northern companies remains as before, and they remain the "railroad corporations." The Securities Company has not superseded them, or either of them.

It may be argued, that to allow the stockholders of one of these railway companies to individually buy the stocks of the other, would be to permit an "Evasion of the law." What is an "Evasion of the law?" And what are its legal consequences? Has any rule on either subject ever been formulated? If so, by whom? Where is the rule to be found? What are its application and extent? Every act done in *conformity* with law is an "evasion" of all laws prohibiting the doing of other acts. Every time a man passes his neighbor without killing him, he "evades" all statutes against homicide. None "evades" so many laws as those who obey all of them.

In this sense, and in this only, has the purchase by a *stockholder* in Great Northern, of shares in Northern Pacific, been an "evasion" of the Minnesota Statutes forbidding each *railway company* to buy shares in the other. A law forbidding a "railroad corporation" to buy certain stock can never be "evaded," in an improper sense, by somebody else purchasing it. The purchaser would obey, not "evade", the law.

It certainly did not occur to this Court that the stockholders of Great Northern would "evade" the laws by purchasing Northern Pacific stock, nor that the stockholders of Louisville and Nashville would "evade" the Constitution of Kentucky by purchasing the Chesapeake railroads. The Court never thought of that. On the contrary, the Court considered that the stockholders would obey *all* the laws in both in-

stances. The "evasion of law" theory is a much later discovery. As the Court said, the object of such laws is to prevent one *railroad corporation* getting control of another.

If the evidence showed that the real meaning of the parties here was to put one of these railway companies under control or management of the other, and the purchases by Northern Securities Company were planned merely to facilitate the carrying out of such an arrangement, then, and only then, might those purchases be regarded an "evasion" of the statute. But there is no evidence in that direction. The proofs are all the other way. Neither railway company is designed to have the smallest control of the other. On the contrary, each is, and is to be, controlled by the holders of its own stock, as formerly.

A consolidation of two railroad corporations, or the ownership by one of them of stock in the other, is not at all the same thing as ownership by a third party of portions of the stock of each. This Court remarked, in *Pullman's Palace Car Co. vs. Pacific Ry. Co.*, that the Missouri Pacific Company, by owning nearly all the stock of the Iron Mountain Company, had all the advantages of control of the Iron Mountain Railroad, but not that control itself; and the case turned wholly upon the total difference between one thing and another thing, giving to the possessor of it all the advantages of possession of the other.

So, even if it could be assumed that ownership by a third person of a majority of the stock of two companies would permit the owner of the stock to control the business of the two roads as much as could a consolidated company, the two species of control are not

at all the same thing. The one is merely indirect and moral, the other direct and immediate.

Prohibitions of doing designated acts do not forbid the doing of other acts, producing results somewhat similar to those flowing from the acts forbidden.

The prohibition of doing all things that accomplish certain results can be made only by a sweeping prohibition of everything leading to such results. Such is not the method in these acts.

It may also be said that the Minnesota Acts of 1874 and 1881 are to be regarded as expressions of a policy of the State against the placing of control over two competing railways, in the same body of men, in any form, and that the Courts should recognize and enforce the policy, though the words of the statutes may themselves fail to describe the things actually done or the doers of them.

The first answer to this is that neither in these acts, nor in any other parts of the State legislation, has any such policy ever been declared. Those who assert the existence of such a policy find it exclusively in their own minds, and not in the statute books of Minnesota.

Since the building of railways by corporations began in this country the stocks of those corporations have been bought and held, not only by individuals and partnerships, but by all sorts of corporations, including other railroad companies. The earliest statutes of Minnesota recognized and authorized the practice of railway corporations buying and holding each others' stocks. In addition to the general laws, substantially every early special charter authorized it in the most

unrestrained fashion. The charter of Great Northern is an example.

If the Legislature of Minnesota had ever reached the conclusion that the stocks of two competing railway companies ought, in no case, to be held by the same owner, it surely would have said so. That has always been the easiest thing to say. A half-dozen words, of the commonest kind, would suffice. The insertion of that many additional words, in the Acts of 1874 and 1881 would have done it. No legislature could so bungle as to stop with saying that "railroad corporations" may not do certain things, when it was trying also to stop individuals and other companies from doing them. A conclusive argument against the existence in Minnesota of such a legislative policy, is the fact that it has never been declared. Besides, as far back as the year 1896, the Supreme Court of the United States, being required to construe the Minnesota Acts of 1874 and 1881, expressly said that they do not include stockholders of railroad corporations. It must be assumed that all departments of the State government had immediate notice of this interpretation. No different one has since been given by any Court. The State Legislature has made no manifestation of dissent. The fact that it has not, proves that the interpretation of the Supreme Court is the one the Legislature meant the acts to have.

The Courts could not create a policy on the subject of who may buy and own property. Popular opinion could not do it; even leaving out of view the fact that no method of reliably ascertaining what public opinion is, outside of legislation, has yet been devised. The State Legislature alone can say what is the State policy in such matters. Until the Legislature speaks,

there is no state policy on the subject, and the extent of the policy is that of the declaration.

The laws are not an automatic contrivance, by which without legislative action, whenever a supposed public disadvantage arises, the thing at once becomes unlawful, and a complete remedy comes forth of its own accord. Legislatures are not such unnecessary arrangements as that would make them. Therefore, to show, if it could be shown, that a single ownership of a majority of the stocks of two competing railways would be hurtful to the public, would not be even the beginning of a demonstration that any law against it, or any public policy upon the subject of which the Courts could take notice, actually exists. The demonstration would have to go further, and include a statute that had been passed.

It is fair to presume that the restrictions of the Acts of 1874 and 1881 to the railroad corporations themselves was deliberate and purposed. The Legislature has never shared the recent views of some, that a practice under which the transportation systems of the country have been able to serve the public so well for fifty years has suddenly become a menace to it. Besides, the great bulk of all the stock of Minnesota railroad corporations has been issued under special charters that are contracts. By those charters the stocks have been given the status of personal property, without condition or limitation. What power has the Minnesota Legislature to subsequently limit the amount of a particular kind of property that may be owned by, say, a citizen of New Jersey? With a corporation of the State of Minnesota, the case is different. It may be admitted that a State may restrict the

capabilities of the corporations it creates. Such regulations merely define the power to buy. As the powers of a corporation all arise from the laws that have created it, or those under which it does business, those powers are necessarily limited to what the laws say they may be. A corporation can buy only what the laws of its creator say it may buy. But laws saying what a corporation of the State may buy, do not go to the right of an owner of property to sell it to any one capable of buying it. They do not operate on the seller at all. In this view, such legislation as the Minnesota Acts of 1874 and 1881 are supportable by the constitutions. The State is merely acting within its competence of naming the powers of the corporations it creates. But when a State has affixed the unrestricted status of personal property to certain things, in themselves harmless, can it subsequently say that the owner may not sell them to any natural person, anywhere, or to any other sort of person residing outside of its jurisdiction? If the State could do so, it would be because the State could pass beyond its own borders, and limit the right of those who have never been within its jurisdiction.

Undoubtedly, so far as concerns the shares of companies created by special charter, similar to that of Great Northern, the Minnesota Legislature went to the limit of its powers in the Acts of 1874 and 1881.

To extend those acts to persons and corporations not mentioned in them, would be to thrust into them words that the Legislature itself has refrained from putting there. For such an interpolation, there would be no authority.

The Act of 1889, mentioned, and to some extent relied on, by appellant, is as follows:

CHAPTER 228.

AN ACT TO AMEND SECTION TWO (2) CHAPTER NINETY-FOUR (94) OF THE GENERAL LAWS OF THE YEAR ONE THOUSAND EIGHT HUNDRED AND EIGHTY-ONE (1881) RELATING TO CORPORATIONS.

Be it enacted, etc.

SECTION I. That Section two (2) of chapter ninety-four (94) of the general laws for the year one thousand eight hundred and eighty-one (1881), relating to corporations, is hereby amended, by adding at the end thereof the following:

Any railway company of this state, empowered by the laws thereof to consolidate its railway, property and franchises, or any portion thereof, with the railway property and franchises, or any portion thereof, of another railway company, may effect such consolidation or purchase, by acquiring the stock, bonds or other securities of such other railway company; and for the special purpose of acquiring the same, may create, issue and dispose of its own stock, bonds or other securities, in addition to the amounts of the same it is otherwise empowered to issue, to an amount not exceeding the actual value of the stock or bonds of such other company, acquired by it. Any railway company of this state may also, for any other purpose authorized by its acts or articles of incorporation, create, issue and dispose of such amounts of stock as the boards of directors may find necessary for such purpose. Prior to the issuance of any stock under the provisions of this act, the company issuing the same shall file with the secretary of state a duly authenticated resolution of its board of directors, stating the number and par value of the shares to be issued, and the particular purposes for which the same are to be issued.

Provided, That nothing in this act contained shall authorize any railway company to sell its capital stock for less than full par value thereof, in money, property, work or services.

Provided further, That nothing in this act shall be so construed as to authorize the issuance or

sale of any stock or bonds, by any such company, or the performance of any act, prohibited by chapter twelve (12) of the general laws of one thousand eight hundred and eighty-seven (1887), or by any other law of this state relating to the issuance or sale of the stock and bonds of any railway company therein.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved April 24, 1889.

(NOTE. Chap. 12, Laws 1887, referred to in the foregoing act, was entitled "*An act relative to the issue of false, fraudulent, and part-paid and unpaid shares of the stock of railroad companies and providing a penalty therefore.*" The title of the act sufficiently discloses the nature of its contents.)

This act of 1889, allowing a corporation permitted to consolidate with another, to effect such consolidation by acquiring the stock or bonds of such other, does not make such acquisition itself a consolidation. It merely permits consolidations to be made under the provisions of Section II. of the Act of 1881, in cases where the parties might be unable to observe certain of the formalities therein required, according to their manifest spirit.

It will be noticed, that an essential step in consolidation, under the Act of 1881, is its approval by the stockholders of each of the consolidating companies; but where the stock of one company is owned by the other, it might be claimed that, in reality, the approval would be the act of but one of the companies; and the validity of a consolidation under such circumstances might be subject to doubts, that would impair the credit, and hence the usefulness to anybody, of the resulting new corporation.

The Act of 1889 removes this difficulty, and that was undoubtedly its purpose. The obvious meaning of the

act is, that one corporation may buy the stock or bonds of another, for the express purpose of causing a consolidation with the other, and then use such securities for accomplishment of the purpose, without giving other and perhaps dissenting interests the right to object that the same party is acting on both sides of the transaction. The Act of 1889 was in line with the fixed policy of the State to encourage and facilitate unification of railway ownership and control.

The act was not passed to introduce into the statutes a new mode of uniting two previously separate and distinct corporations. Mere ownership by one company of the stocks and bonds of another could not put them together. They would remain as separate and distinct companies afterward as they had been before. The Legislature could not have meant to provide a process for uniting corporations which plainly could not unite them.

In another part of that act the Legislature further encouraged and facilitated consolidations by empowering corporations which buy the stocks and bonds of other companies with the view of afterward consolidating to issue and sell their own shares for making the purchase to any amount that may be needed for the operation, regardless of the limitations imposed upon the amount of their stock by their charters.

W. P. CLOUGH,
Of Counsel for Respondent Northern Securities Company.

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JAMES H. McKENNE

Supreme Court of the United States.

OCTOBER TERM, 1903. No. 433.

THE STATE OF MINNESOTA,
Appellant,

vs.

NORTHERN SECURITIES COMPANY, THE GREAT NORTHERN RAILWAY COMPANY, THE NORTHERN PACIFIC RAILWAY COMPANY and JAMES J. HILL, as President of the Northern Securities Company, and Individually,

Appellees.

BRIEF FOR THE APPELLEES.

The Northern Securities Company, herein called the Securities Co., is an investment and financial company, whose articles of incorporation under the laws of the state of New Jersey are set out in paragraph I of the bill of complaint; the Great Northern Railway Company, herein called the Great Northern Co., and the Northern Pacific Railway Company, herein called the Northern Pacific Co., are railway com-

panies, the former chartered by Minnesota, the latter by Wisconsin, each of them operating a line of railway from Lake Superior and also from St. Paul, Minnesota, to Puget Sound, and competing to some extent with each other for domestic and also for interstate traffic.

The Securities Co. has acquired a majority of the shares of each of the two railway companies, and this ownership of shares, and the manner in which the ownership was acquired, constitute the basis of the bill of complaint.

The Pleadings.

The bill alleges in paragraph XI that the Securities Co. was incorporated pursuant to an agreement between the defendant James J. Hill and other officers and shareholders of the Great Northern Co., controlling a majority of the capital stock, acting for themselves and for the railway company with its knowledge and consent, and in collusion with officers and stockholders of the Northern Pacific Co., among them J. Pierpont Morgan, who owned and controlled a majority of the shares of the Northern Pacific Co., and who were acting for themselves and the company with its knowledge and consent; and further alleges that the Securities Co. was incorporated under such agreement solely as an instrumentality by means of which the stock, property and franchises of the two railway companies should be consolidated in effect if not in form, and the management of their business, including the fixing of rates and charges for passenger and freight transportation over all their lines, as well within as without the state of Minnesota, should be vested in and controlled by the Securities Co., and all competition between the

two railways, as well within as without the state of Minnesota, should be suppressed and removed, and by means of which the promoters and organizers of the Securities Co. intended and sought to evade and violate the laws of Minnesota prohibiting the consolidation of competing railways, and the laws of that state prohibiting all combinations in restraint of commerce or trade within the state of Minnesota or between the people of this state and those of other states and countries.

In paragraph XII the bill alleges that to carry out and accomplish such purposes and to effect a combination of the two systems, as well within as without the state, and to suppress all competition between them, it was agreed that the Securities Co. should be organized with a capital stock equal to that of the Great Northern Co. at a valuation of $180 per share plus that of the Northern Pacific Co. at a valuation of $115 per share, and that its stock should be exchanged for the shares of the railway companies at these valuations and without other consideration, and that more effectually to carry out these purposes, they caused the preferred stock of the Northern Pacific Co. to be retired by proceedings stated at much length in the bill.

In paragraph XV it is alleged that the Securities Co. has acquired, by the exchange of its own stock therefor, upwards of 90 per cent of the stock of the Northern Pacific Co. and upwards of 75 per cent of the stock of the Great Northern Co.; and that the sole purpose, object and effect of such acquisition of stock by the Securities Co. was and is to transfer to it the complete management and control of the railway lines within and without the state of Minnesota; and to

place the complete management of them and the power to dictate the policy of each railway and fix the rates of transportation on freight and passengers, within the state of Minnesota as well as without said state, in the hands of one party or board of directors; and to enable a single body of men, acting as the board of directors of the Securities Co., to fix the rates and charges on both railways and determine what trains should be operated over any of their lines, remove all competition, and prevent the building of lines into new territory; and to create and perpetuate a monopoly in railway traffic in northern Minnesota and elsewhere. That the agreement and its consummation are in restraint of trade, tend to create a monopoly in railway traffic, and are against public policy and void.

In the same paragraph XV it is also charged that the holders of a large majority of the stock as well as the officers and directors of each railway company had knowledge of and consented to the carrying out of the agreement complained of.

In paragraph XVI it is charged that since December, 1901, the Securities Co. has been and now is directing and managing the business of both railway companies and is determining and enforcing passenger and freight rates on their lines of railway, together with the manner and means of handling business and the earnings of the companies, and will continue to do so unless enjoined.

In paragraph XVII it is alleged that the Securities Co. never had any property or assets except those acquired by the exchange of its capital stock for that of the railway companies; and that it was organized solely and exclusively to take over by exchange, without other consideration, all the capital stock of each rail-

way company and its earnings, and by this device to substitute for the separate and independent management and control by its officers and directors, the management and control by the Securities Co., and to vest in the Securities Co. the selection of the officers and directors of the railway lines and the control and disposition of the earnings of each of them.

In paragraph XVIII it is alleged that the agreement complained of has been consummated, and the two systems are now under the management and control of the Securities Co., and by reason thereof all competition between the lines has been destroyed and a monopoly of railway traffic in Minnesota as well as without the state has been created, to the great and permanent and irreparable damage of the state and of its people, and in violation of its laws and of the laws of the United States, namely the so-called Anti-trust Act of Congress, approved July 2, 1890.

In paragraph XIX it is alleged that in carrying out the alleged agreement and plan of consolidation and monopoly, and in every step taken to consummate it, the officers and directors in each railway company were fully advised and consented thereto.

The prayer for judgment is that it be decreed:

1. That the agreement and combination alleged are unlawful, and that all acts done and to be done in pursuance thereof are contrary to and in violation of the laws of the state of Minnesota and of the United States.

2. That the Securities Co. be enjoined from acquiring, holding or voting any shares of stock of either

railway company, or taking any part in the management or control or operation of any of their lines of railway or the management or control of either company.

3. That the Northern Pacific Co. be enjoined from permitting the Securities Co. to vote the stock held by it, or recognizing it, or paying any dividends to it, as a stockholder; or from combining with the Great Northern Co., either directly or through the action of the shareholders; from making any form of combination or agreement which shall disturb the independence or integrity of the company or its independent management and control; and that the company, its officers, directors, etc., be enjoined from entering into any agreements directly or indirectly destroying free and unlimited competition with the Great Northern Co., by the interchange of traffic, pooling of earnings or division of profits or otherwise.

4. That like injunction be granted against the Great Northern Co. and its directors.

5. That the defendant James J. Hill, both individually and as an officer of the Great Northern Co., be enjoined from paying or permitting any dividends to be paid from the earnings of the Great Northern Co. on the stock held by the Securities Co., and be enjoined as an officer, director or stockholder in the Securities Co. from dictating the policy of, or directing or controlling the transportation or business affairs of, either of the defendant railway companies.

The bill asserts various grounds for relief against the agreements and acts complained of.

In paragraph V the state alleges its ownership of large quantities of land received by it under the swamp-ground grant of congress (by the terms of which the lands were granted to the state to be sold and the proceeds used in draining those not sold), and that the matters complained of will prevent the construction of branch railways of either company into or near these lands, and so will prevent the sale thereof.

In paragraph VI it is alleged that in supplying its various state institutions the plaintiff is engaged in domestic and interstate commerce, shipping such supplies over the lines of the two defendant railway companies.

Besides these grounds of action as a land-owner and shipper, the state, as representing its citizens, alleges in paragraph IX the injury to the people at large from the destruction of competition by reason of the alleged consolidation of the two railway companies.

In paragraph X the state assails the organization of the Securities Co. as a violation of two of its own statutes in regard to the consolidation of competing railway companies, and also of a highly penal statute prohibiting and punishing all conspiracies or combinations in restraint of domestic or interstate commerce, and all combinations between corporations whereby one of them surrenders its franchises or the control of its business to any other company, "in case where the purpose or effect of such combination is to control or

monopolize in any manner the trade or commerce or any part thereof of this state or of the several states."

The defendants, in their various answers, deny that the Securities Co. was the result of any such combination as that alleged in the bill; deny the formation of any combination in restraint of either state or interstate traffic, or that as a result of any combination or the formation of the Securities Co. there has been any such restraint. They deny that the Securities Co. is a railway corporation, or that its purchases of stock are in any way obnoxious to the laws of Minnesota. They allege that the Securities Co. is the result of a combination which was formed soon after an attack had been made on the property and commerce of the defendant railway companies, which attack, if successful, would have been destructive of that commerce and would have entailed upon them ruinous losses; and that such combination was formed by persons holding a minority of the stock of the two railway companies for the purpose of protecting their own shares and that of their fellow-shareholders, and the property and commerce of their respective companies, from a repetition of such attacks; and that they did not aim at acquiring a majority of the shares of each railway company or to suppress competition between them, and they say there has not been any such restraint or suppression.

The history of the formation of the Securities Co. and of the events which led up to it, is fully stated in the evidence largely in testimony introduced by the plaintiff.

The Facts and Evidence.

[The figures refer to the pages of the record.]

Ever since the opening of the railway of the Great Northern Co. to Puget Sound in 1883, that company has been vigorously engaged in the creation of a traffic, both interstate and international, which was essential for its own existence as well as to the development of the country traversed by its road. During the first three years of that time, the lines now belonging to the Northern Pacific Co. were in the hands of receivers, but since they emerged therefrom, and were acquired by the present Northern Pacific Co., defendant here, in 1896, that company has pursued the same course as the Great Northern Co.

What has been done towards building up a commerce with eastern Asia, as well as between the central states and the Pacific coast, what obstacles have been encountered and surmounted, and in what manner, are recounted by Mr. Hill in his testimony (912–920, 927, 931–3).

And such commerce was and is in competition with the whole world (Mr. Hill, 929, 944, 985–6).

How it became indispensable to the companies to have an eastern connection which could be depended upon to furnish a market for their east-bound traffic, supplies for their west-bound traffic to the Pacific coast as well as to Japan and China, to furnish the coal indispensable for their own use and the use of the dwellers along their lines east of the Rocky mountains; and how the roads of the Burlington system fulfilled these requirements better than any other; and how the two defendant companies, in the spring of 1901, joined in a purchase of the

shares of the Burlington Co. to the amount of about 108 millions par value, (each company separately buying and owning one-half,) at a cost of $200 per share, or about $216,000,000 in all, paying for them in their joint four-per-cent long-time bonds:—all of these matters are recounted in the testimony, (Mr. Hill, 919–920, 921-9; Mr. Weyerhaeuser, 996-7; Mr. Harris, 997-1008, 1015-1017, 1020, 1023-4; Mr. Hill, 58-61; Mr. Steele, 476-478). And see the Trust Deed securing the joint bonds of the purchasing companies (758-800).

Almost immediately after this purchase, persons interested in the Union Pacific system purchased in the market 78 millions of the 155 millions capital stock of the Northern Pacific Co. That capital was divided into 80 millions of common and 75 millions of preferred stock. The purchases in the Union Pacific interest comprised 37 millions of common and 41 millions of preferred stock, and were made in hostility to the enterprise and commerce of the defendant railway companies.

That such holding of a majority interest in the Northern Pacific stock by persons whose chief interest was in the Union Pacific system would be ruinous to the interests of these two defendant railway companies and their shareholders, and especially to their great enterprise of building up an interstate and oriental commerce in aid of which they had purchased the Burlington shares and incurred obligations to the amount of more than 200 millions of dollars,—in short, that the injury to each of the defendant companies and their enterprise would have been destruction, is shown by the testimony of Mr. Hill.

It would not have diverted the business to another line, for no other line was built so as to be capable of doing it. And no other line could obtain the essential return freight. Hence the commerce would have ceased to exist (Mr. Hill, 943–4, 985–6, 989–990).

On learning of these purchases, J. P. Morgan & Co., who had reorganized the present Northern Pacific Co. after the bankruptcy of the old company, and had been since 1896 its financial agents, considered themselves bound in honor to protect the interests of the shareholders and to that end went into the market and bought 15 millions of the Northern Pacific Co's common stock, which, added to their former holding, made between 20 and 21 millions. At the same time, Mr. Hill and his friends held about 20 millions common stock of the Northern Pacific Co., being what was left of about 30 millions which they had bought in 1896 and two or three millions which they had bought since that time, (all the purchases being on individual account and not joint account,) and which had been reduced by sales to from 20 to 21 millions; so that the holdings of J. P. Morgan & Co. and Mr. Hill and his friends amounted to about 41 millions, being a clear majority of the common stock.

During the operations of the opposing parties, many persons had sold to one party or the other stock they did not own. The competition between these sellers to buy stock for delivery pushed the price of common stock, at one time, to $1,000 per share, May 9, 1901, and threatened a general panic and caused alarm in all the money markets of the world. The Union Pacific party, who had just bought 78 millions of stock on credit, were naturally desirous of allaying this tempest, and, at a meeting of bankers and others called

to devise means of alleviating the financial situation, the Union Pacific interests agreed that Mr. Morgan should have power to name the Board of Directors of the Northern Pacific Co., to be chosen at the October election (Mr. Hill, 79, 80, 83, 87, 88, 92, 93, 177; Mr. Steele, 484-8, 498; Mr. Morgan, 538-9, 541-2).

But there was no agreement as to what persons should be named as directors by Mr. Morgan, nor any agreement as to any purchase of the stock held by the Union Pacific interests.

As the preferred stock was by its terms subject to retirement at par on the first day of January, 1902, and as the decision of this question was with the board of directors, and as J. P. Morgan & Co. had some months before, and before the dissolution of the voting trust controlled by them, determined on the retirement of the preferred stock, this action in respect of the board of directors sealed the fate of that stock, and left the stock-control of the Northern Pacific Co. (or rather the power to obtain it by exercising their right to purchase at par their proportionate share of the new common stock to be issued in place of the preferred stock when retired) absolutely with Mr. Hill and Mr. Morgan and their friends (Mr. Hill, 97, 112–114, 133-4; Mr. Morgan, 524, 525, 567-8; Mr. Mellen, 600, 601; Mr. Harriman, 577, 880).

The salvation of the interests thus attacked had lain in the fact that the attacking party had been misinformed or ill advised as to the seat of the power to retire the preferred stock. Otherwise instead of buying 37 millions of common and 41 millions of preferred, they would have bought 41 millions of common and 37 millions of preferred, in which case nothing could have prevented their absolute stock control of the

corporation with the disastrous results which Mr. Hill has described.

And, as just such an attack might be renewed by the same or other parties, as a change of ownership of but a few millions—a change that might at any time result from death or otherwise—would change the balance of power in the corporation, and as the makers of any future attack could not possibly make the mistake of buying preferred stock for common, Mr. Hill and his friends and J. P. Morgan & Co. deemed it absolutely necessary to take measures which should protect their property and that of their fellow shareholders, and the commerce of the two roads, and the enterprise which they had undertaken, and which required every advantage which the Burlington connection could give. For some years before this time, Mr. Hill and nine or ten friends, owners of somewhat less than 30 per cent of the Great Northern shares, had considered favorably a project of uniting their shares and transferring them to a corporation which should issue its own shares in payment, so that the railway shares would be kept together and voted as a unit, and no other interest could acquire the control of any of them without acquiring a majority of the shares of the new company, unless such company should be disposed to sell; and, in case of sale by the new company, all the shares would stand on the same footing. In the meanwhile the original holders who would thus dispose of their shares, would hold stock of the new company, which they might deal with at their will. Their reasons for this were that some of them were advanced, others far advanced in years. They had for many years been connected with the corporation, had been consulted largely as to its

policy and desired that policy to be continued, and also that all their shares should be treated alike in case of any disposition. Up to the time of the raid, no definite action had been taken towards carrying out this project (Mr. Hill, 115, 117, 939, 942–3; Col. Clough, 205–6, 233–5; Mr. Kennedy, 362–5; Mr. Baker, 403, 406; Mr. Thorne, 422–423; Mr. James, 436–8).

Early in June, 1901, Mr. Kennedy, one of Mr. Hill's associates, owning Great Northern stock as well as Northern Pacific stock, and who had just returned from Europe, suggested to Mr. Hill, with a view to protecting their Northern Pacific interests from such a raid, that their Northern Pacific stock also should be transferred to the projected holding company for their Great Northern shares. This suggestion did not include the J. P. Morgan & Co. interests in Northern Pacific, and J. P. Morgan & Co. had but a trifling, if any, interest in Great Northern shares (Mr. Hill, 116–7, 159–160; Mr. Morgan, 547).

In the course of the summer Mr. Kennedy's suggestion was further developed. It had been early proposed that the projected holding company for Great Northern shares should be open to all Great Northern shareholders who might wish to take advantage of it. The reason of this was that during the whole history of the Great Northern Co., all shareholders had acted in entire harmony, and no advantage had ever been offered to or taken by any that was not offered to all; and they did not wish that any of the shareholders should be in a position to say that Mr. Hill and those other gentlemen had made for themselves a company, into which the great body of shareholders of

the Great Northern Co. were not permitted to enter; and it was determined that this proposed holding company to include the Great Northern and Northern Pacific shares of Mr. Hill and his friends should be open to all the Great Northern shareholders. It was not expected that any great number of the latter would dispose of their shares to it, for the price proposed to be paid ($180 per share in stock of the new company) was considerably below the ordinary market price of Great Northern stock (Mr. Hill, 121, 160; 939, 941-2, 956-8; Mr. Kennedy, 364-366; Mr. James, 441).

The idea of placing a majority, if possible, of Northern Pacific shares where they could be protected from a recurrence of such a "raid" had also occurred to Mr. Morgan and was mentioned by him to his partners on his return from Europe early in July. His purpose in so doing was simply the protection of the Northern Pacific stockholders, with no view whatever of combining the stock of the two companies in one ownership—in fact, his project was limited to Northern Pacific shares. At first he had in mind placing the shares in a trust company, but this was soon abandoned, as, from its small capitalization, a trust company could be bought up easier than the railroad company. About the month of September, learning of the enlargement of the plan of the Great Northern holding company, and the large capitalization resulting therefrom, which large capitalization would add greatly to the protection of the Northern Pacific stock if transferred to it, Mr. Morgan proposed to Mr. Hill that he would turn in the Northern Pacific stock of J. P. Morgan & Co. and their friends to this proposed holding company. This was looked upon favorably, and with the usual delays in such matters

the Northern Securities Co. was formed (Mr. Steele, 490, 499, 504; Mr. Morgan, 545–550, 555–6, 563–4; Mr. Kennedy, 398).

The following matters are especially to be noted:

Mr. Hill and his friends bought, in 1896, 29 millions of stock of the Northern Pacific. In May, 1901, they had but 20 millions, which does not indicate any plan of Mr. Hill and his friends to acquire control of the Northern Pacific Co. (Mr. Hill, 80, 177; Mr. Kennedy, 384; Mr. Morgan, 516, 517).

At the time of the purchase of the Burlington shares, when the two companies incurred a joint obligation of about 216 millions for the shares which they had bought in severalty, about 54 millions each, there was no thought on the part of any one of forming a company to hold the shares of *both* defendant railway companies. If such plan had then existed, it would certainly have been put in operation before the companies had incurred this enormous debt, each relying for its protection wholly on the good faith and self-interest of the other. On this point, that any union of stock in a holding company or otherwise was not thought of at that time nor until after the raid, the testimony of Mr. Hill and of Mr. Morgan is uncontradicted and conclusive (Mr. Hill, 935–6; Mr. Morgan, 535).

While it was expected that the gentlemen who had for so long been considering favorably the project of a holding company, would transfer their shares to it when formed, yet there was no agreement among them that any one of them would transfer the whole or, indeed, any part of his shares. In point of fact, Mr. Hill kept out nearly 3 million of his Great Northern stock from motives of sentiment.

And, indeed, there was no need of agreement as they were familiar with each other's views, their interests were the same, and each one naturally expected that the others would do what was considered for the interest of all (Mr. Hill, 143, 146–7, 949; Mr. Kennedy, 387–8, 393–4; Mr. Steele, 503–4; Mr. Baker, 413–4; Mr. Thorne, 427; Mr. James, 447–450, 455).

It has been erroneously asserted that these gentlemen agreed among themselves that when the proposed holding company should be formed they were to use their influence with their fellow-shareholders to transfer their shares to the company, and that the shares which the company thus obtained from other shareholders than Mr. Hill and his associates were obtained by means of such influence. Nothing can be farther from the truth. There is not a scintilla of evidence in support of such assertion (Mr. Hill, 950–5; Mr. Morgan, 564; Col. Clough, 210, 254).

And the most that is claimed by appellant in its brief is that the agreement among the promotors of the Securities Co., was that the control of the Northern Pacific Co. was to be turned over to the Securities Co., but *not the control of the Great Northern.* As to this last appellant does not claim that the agreement went any farther than "that Mr. Hill and his associate shareholders of the Great Northern would also turn their Great Northern stock" (less than 35 million of the 125 million capital), "over to the Northern Securities Co. when organized, for the same purpose."

Appellant's Brief, pp. 26–7.

The Securities Co. was organized in New Jersey after an unsuccessful attempt to find a territorial Minnesota charter that would answer the purpose, and after examination of the laws of West Virginia and

New York. New Jersey was chosen, not because of any marked difference between its corporation laws and those of the two other states, but because the laws of New Jersey, having been longer on the statute books, had been more fully construed.

It has been and probably will be objected that the New Jersey charter was chosen and that Minnesota was the only state for them to incorporate in. The value of this objection is made clear by the reason given for it, namely, that the holders of the Great Northern Co.'s stock had no business to leave their homes along the line of that road and go to New Jersey for a charter. But, as the Great Northern shareholders in Minnesota outside of the two principal cities could probably be counted on the fingers of one hand, as the holders of 155 millions of Northern Pacific stock would certainly owe as much of a duty to incorporate in Wisconsin as the holders of Great Northern stock would to incorporate in Minnesota, as nearly all the shareholders of both railway companies lived on the Atlantic coast, and as nobody incorporates in Minnesota who can help it, we submit that no argument can fairly be made to the prejudice of the defendants in this case, that the company was incorporated in New Jersey (Col. Clough, 206–209, 237–242, 245–253, 281, 292–300).

After its formation, the Securities Co. made large purchases of the stock of the two railway companies, mostly in exchange for its own shares and to the extent of about 40 millions in cash. Each purchase was made as a result of a direct communication with the holder of the shares sold—was an out-and-out purchase, the ownership by the Securities Co. being unconditional and free from trust. The Securi-

ties Co. is at perfect liberty to-day to sell to any one any or all of its shares in either company (Col. Clough, 210, 214, 289, 302; Mr. Kennedy, 385; Mr. Steele, 503-4; Mr. Morgan, 562, 564; Mr. Hill, 948-9; Mr. Baker, 419-420; Mr. Thorne, 431-2; and see Form of Offer to Sell Shares to Securities Co., pp. 1048-9).

The Securities Co. purchased from J. P. Morgan & Co. the shares, amounting to about 78 millions, which had been bought by the Union Pacific interests in their raid. They had been first purchased by Mr. Morgan, who assigned his purchase to the Securities Co. This stock had stood in the names of Harriman and Pierce and is known as the Harriman stock. When it came to be delivered, it appeared that there was less than had been supposed; and as the Morgan purchase had been made at a lump sum and not at so much per share, the Securities Co. refused to take it, but finally did so on abatement of the price (Mr. Hill, 124-131; Mr. Morgan, 558-9, 563; Mr. Harriman, 569-70, 575, 577-8; Mr. Perkins, 462-469, 474-5; Mr. Steele, 491-3, 497-8, 502-3; Col. Clough, 283-5, 287-8; Mr. Nichols, 326-8, 331, 336-7). The price paid was $8,915,629, in cash, and $82,491,871, in shares (Col. Clough, 199, 200).

The negotiations between Mr. Morgan and the Harriman party began early in October, 1901, but not until the board of directors of the Northern Pacific Co. had voted (on November 13, 1901,) to retire the preferred stock, and all hope of keeping the stock control of the Northern Pacific Co. was thus destroyed, did Mr. Harriman finally make up his mind to sell (577). The sale to the Securities Co. was made on November 18th (Col. Clough, 199).

Another cash purchase of stock was that of about

$34,000, of the new issue of Northern Pacific common stock, which the Securities paid for with that company's convertible certificates to the same amount, which it had bought at par for cash (Col. Clough, 289, 316-7).

The Northern Securities Co. was not formed for the sole purpose of acquiring shares of the two defendant railway companies. It was proposed to acquire the shares of other properties, valuable for use in connection with the railway companies, such as coal-mines, etc., but which the railway companies could not themselves well own (Mr. Hill, 119, 159; Mr. Morgan, 547; Col. Clough, 212; Mr. Baker, 423).

There was no purpose on the part of any of those connected with the Securities Co. to restrain or monopolize trade or commerce, nor to enhance prices. Their object was to preserve and enlarge the commerce of the roads (to increase immensely the volume of their traffic in the one way that was possible, *i. e.*, by making low rates) by defending the roads from such attacks as would necessarily restrict if not destroy their commerce, and especially that in aid of which the Burlington stock had been purchased. Commerce has not been restrained but has very largely increased, both the transcontinental and Asiatic as well as the local commerce; also the traffic in coal from the mines in Illinois which has been of incalculable advantage to the people of Minnesota and to the people along the lines of these roads during the past winter, and has done more than anything else to save them from a coal famine and make the country habitable. And rates have been reduced, not raised. (Mr. Kennedy, 388-9; Mr. Perkins, 475; Mr. Steele, 505; Mr. Morgan, 563-4; Mr. Hill, 922-5, 945-6,

984–6; Mr. Harris, 1023–4, 1027; Mr. Mellen, 1034; Mr. Saunders, 1042–3).

And even if the measures thus taken to develop and protect the commerce of the railways, and which have already greatly extended and will surely continue to enlarge it—even if the effect of such measures be to restrain competition to some extent in the small percentage of the business of the railways in which the rates might be affected by competition or the want of it between them (Mr. Hill, 946, 963–4), yet even this small percentage of competitive business has shared and will continue to share the great increase of commerce and lowering of rates resulting from the enterprise for which the Burlington purchase was made, and the formation of the Securities Co. to protect that purchase.

Taking all the facts into account it cannot be said that the net result has been or will be a restraint of commerce. The contrary is true and is proved. And all the facts—all the commerce of the railway companies—must be taken into account, and not merely the small portion, if any, that may have been incidentally restrained.

> "All the facts and circumstances are, however, to be considered in order to determine the fundamental question whether the *necessary* effect of the combination is to restrain interstate commerce." *Addyston Pipe Co. v. United States*, 175 U. S., 211.

When the question is upon the restraint of trade or commerce.

> "Cases must be judged according to their circumstances, and can only be rightly judged when the reason and grounds of the rule are carefully

considered." *Oregon Steam Nav. Co. v. Winsor*, 20 Wall., 64, 68, per BRADLEY, J.

And any suppression or diminution of competition that may have taken place (whether attended or not with increase of rates) is the result not of any contract, combination or conspiracy in restraint of commerce, but of the sale and purchase of the railway shares, and the union of ownership in the Securities Co., and is an incident of such ownership. Any suppression or diminution of competition thus arising has never been held to be in restraint of trade or commerce.

Some of the More Conspicuous Errors and Omissions in the Statement of Facts in Appellant's Brief.

Pages 11–13. The statement of Minnesota statutes is incomplete. They are more fully stated *infra* in this brief.

Page 13. The statement that the Northern Pacific Co., a Wisconsin corporation, "became, under the laws of Minnesota, a corporation of this State"—that is, of Minnesota—is erroneous, if it mean anything more than that for purposes of the use and taxation of its railway in Minnesota it was placed on the same footing as corporations of that State.

Page 15. The statement that the Northern Pacific Co. and the Great Northern Co., having bought nearly all the shares of the Burlington Co. (upwards of $100,000,000 at par value), "had issued" (*i. e.*, caused to be issued) "in payment therefor, for each dollar of stock so acquired, two dollars in four per cent. joint collateral bonds of said C., B. & Q. Railroad Company, guaranteed by said Northern Pacific and Great Northern Railroad Co.s" is wholly erroneous.

There was no such "high finance" as this. The fact is, and was proved by plaintiff itself, that the purchasing companies made payment in their own joint bonds (Record, pp. 758, 761, Plff.'s Ex. 8).

The error is extraordinary, and the more so that in its brief in the Circuit Court (page 5) the plaintiff correctly states that the two purchasing companies acquired substantially all the shares of the Burlington Co., "and issued in payment therefor, for each dollar of stock so acquired, two dollars in four per cent. *joint* collateral bonds."

Page 15. The statement that Messrs. Morgan and Hill "dominated and practically controlled" the two defendant railway companies, and "decided to purchase for said railway companies the property and franchises of the Chicago, Burlington & Quincy R. R. Co.," and that "no official action was taken by the stockholders or directors of either the Great Northern or the Northern Pacific Cos. relating to this purchase until some time in the spring of 1901, and long after Messrs. Hill and Morgan had agreed upon the same with a committee representing the C., B. & Q. Co.," is one continuous error—an error repeated on page 70.

Messrs. Hill and Morgan did not dominate nor control.

They did not decide to purchase for the railway companies "the property and franchises of the C., B. & Q. R. R. Co."

What they decided to do and what they did was this: (1) Mr. Hill, by negotiating with the Executive Committee of the Burlington, ascertained at what price and on what terms they would recommend their shareholders to sell their shares to the Northern Pacific and the Great Northern companies, and (2) agreed with the committee "upon a basis of purchase, subject to the approval of the boards of the different companies"—each Burlington shareholder being, of course, at liberty to sell or not, on those terms, as he should see fit.

Plff.'s Evidence (Mr. Hill) 57, 59, 60; Mr. Morgan, 532. And see 991–2 (Mr. Hill).

This action of Messrs. Hill and Morgan was, of course, not binding on anybody. The negotiation was concluded some time in April, 1901.

The board of directors of each of the defendant

railway companies voted to make an offer for the shares on the basis reported to them. This was not "*long after* Messrs. Hill and Morgan had agreed upon the same" (*i. e.*, the purchase, according to plaintiff) "with a committee representing the C. B. & Q. Co.," but was in the before mentioned month of April (Mr. Hill, 936).

Page 22. There was no connection between the formation of a holding company and the retirement of Northern Pacific preferred stock (Mr. Hill, 131; Mr. Morgan, 562; Mr. Perkins, 473).

Page 28: Mr. Hill's fixing of basis of exchange. A reference to the very place in appellant's testimony cited for its statement, shows that Mr. Hill's fixing of the basis of exchange was in *June*, 1901, when the first suggestion of a company to hold *any* Northern Pacific shares was made; that it had reference only to the Northern Pacific common stock (about $20,000,000) held by the persons who, with Mr. Hill, held about thirty-three million of Great Northern stock. It was "fixed" (or rather suggested), not by Mr. Hill alone, but on consultation with others interested. It had no reference to a company to acquire additional Northern Pacific stock. No such company had there been thought of (and see pages 54, 55 of Appellant's Brief).

Page 28: Counsel are pleased to call the incorporators of the Securities Co. "three clerks, selected by Mr. Hill and Mr. Morgan," and on page 29, "three young men." They may have been guilty of the latter "atrocious crime," though the record does not say so. Nor is there any evidence that they were "clerks." On the contrary, Mr. Francis Lynde Stetson, plaintiff's witness, says (671) they "were all gentlemen of substance who put in their own money."

Page 36. Just what Col. Clough meant by "legislative contracts with the State of Minnesota, so that they would be beyond the power of amendment," he explains on page 238, folio 947.

Page 57. "The basis of exchange for the stock of the Union Pacific interests and the amount to be paid therefor was fixed by Mr. Morgan and Mr. Hill prior to the organization of the Securities Co."

No authority for this statement is cited, and there is none.

The purchase of this stock was in the first instance a matter between Messrs. Morgan & Co. and Mr. Harriman, with which neither Mr. Hill nor the Securities Co. had anything to do (Mr. Hill, 129; Col. Clough, 307; Mr. Morgan, 558), although on November 15, on being informed that Messrs. Morgan & Co. were about to acquire the shares, the directors of the Securities Co. voted to authorize the president to take the stock from Morgan & Co., at the price they were to pay for it (Mr. Nichols, 342; Col. Clough, 283-5). On conclusion of the purchase by Morgan & Co. they assigned their bargain to the Securities Co., and directed Mr. Harriman to deliver the stock to the Securities Co. This was the first intimation Mr. Harriman had of any connection of the company with the transaction (Mr. Harriman, 571-2).

The stock being tendered to the Securities Co. on November 18th, that company refused to take it at the round sum at which Messrs. Morgan & Co. had bought, for the reason that it was less in quantity than had been represented. An abatement of price was finally agreed on, and the company took the shares at the reduced price (Col. Clough, 284; Mr. Perkins, 474; Mr. Harriman, 578).

Page 59 *(d)*. The circular letter of the Securities Co. offering to buy Great Northern shares contains no "urging" (Ex. A, 1048-9).

No evidence has been or can be offered that the promoters of the Securities Co. had any of the agreements mentioned.

Page 61 (*f*). The thing which counsel think "remarkable" is just the thing which did *not* happen. It was Northern Pacific stock, and not Great Northern shares, that were originally held without transfer for convenience of use as collateral if so desired (Col. Clough, 303, fol. 1208).

Page 70 (5). "Hill and Morgan consummate the purchase of the C., B. & Q. Company for the Great Northern and Northern Pacific Railway Companies. No meeting of either the stockholders or the directors of the Great Northern or Northern Pacific Railway Companies had been held to authorize this."

But "the C., B. & Q. Co." was never bought. And Messrs. Morgan and Hill did not buy even the shares, or any of them, of that company.

See our correction, *supra*, of like misstatements on the same subject, on page 15 of appellant's brief.

Page 70 (7). There is no evidence of any such agreements.

Page 71 (9). Messrs Morgan & Co., did not corner Northern Pacific common stock, nor did their purchases cause the $1,000 per share price of that stock.

Page 71 (10). Mr. Hill had nothing to do with any such agreement.

Page 71 (11). No agreement was made in June, 1901, to form a corporation.

The most that was done was that on Mr. Kennedy's suggestion he and Mr. Hill and one or two of their

associates in Great Northern, considered the question of broadening the scope of their contemplated holding company for Great Northern shares, so as to permit the transfer to it of the Northern Pacific shares held by them, but of no other Northern Pacific shares (Mr. Hill, 116-7, 159, 160; Mr. Morgan, 547).

The matter of taking in the Northern Pacific shares of J. P. Morgan & Co. or of any one else arose two months later (Mr. Morgan, 546, 555).

Page 72 (13). As to Mr. Hill's fixing basis of exchange, see *supra*, remarks on like statement on page 28 of appellant's brief.

Mr. Morgan simply made some changes in the *existing* Northern Pacific board.

Page 72 (16). No authority is cited for this statement and there is none.

Page 73 (17). There is no evidence that Morgan & Co.'s negotiations were for the Securities Co.

On the contrary, both Mr. Harriman and Messrs. Morgan & Co. considered that the latter were buying for themselves (Mr. Morgan, 558; Mr. Harriman, 571). And see comment on a like statement on page 57 of appellant's brief).

Page 73 (18). No such agreement was made (see testimony of appellant's own witness, Mr. Harriman, 570-1). After he had agreed to sell to Morgan & Co., he was told on November 18th to deliver the stock to the Securities Co. This was the first he knew that the stock was to go to the latter (572).

There was no bonus paid.

The ingenious manipulation of the appellant's own evidence in this (18) cannot be fully appreciated without examining the evidence itself.

Page 75 (26). That the Securities Co.'s circular of

November 22, 1901, is a mere offer to buy Great Northern shares, not "recommending or suggesting" anything, has already been pointed out in our comments on page 59 (*d*) of appellant's brief.

Page 72 (28). Mr. Hill's letter of November 30, 1901, is in no sense a circular. He had already received and answered letters of inquiry, and, being about to leave New York, prepared this form of a letter to be sent only in answer to individual letters of inquiry (Col. Clough, 255; Mr. Hill, 952).

Page 76 (31) and (33). The papers speak for themselves.

Page 77 (34). The evidence is that there has been no falling off of competition.

The very rate of the withdrawal of which the State makes so much, as a *competitive* rate, was made by a joint circular (of January 25, 1900), as stated in the circular withdrawing it.

A *competitive rate* made *by agreement* indicates a vigorous if not vicious competition.

The former practice, restored in some instances, the companies were required to abandon as illegal under the long and short haul clause of the Minnesota railway law, which makes no allowance for difference of circumstances.

In Beck's case, the distance from Fergus Falls to Moorhead by Great Northern was about 50 miles, by Northern Pacific 150 miles. The latter was obliged to give up meeting the Great Northern rate or else give every intermediate point on its line the benefit of it, which it had not done before (thus violating the law), which of course was impracticable.

The State has searched Minnesota and even North Dakota for evidences of the horrible consequences re-

sulting from the "merger." It has produced the best it could find if not all it could find.

And what does it amount to?

A worn out spur track in North Dakota, built into a man's farm in 1887, when he farmed 8,000 acres, is taken up in 1901, when he had sold all his land except less than 1,000 acres.

Two farmers in Minnesota found it hard to get cars during the notorious car shortage and railway blockades of the fall of 1902.

Some normal school girls were carried from St. Paul to Moorhead in a special car on the Northern Pacific and returned in like manner by the Great Northern. This *before* the merger; nothing of the kind since. And nothing of the kind *before* except this one instance, and nothing asked since.

And the witness, the normal school principal, though giving, in his direct testimony, the impression that this special car was the result of competition, and amounted to a preference not shown the general public (and so illegal, under our stringent law) was obliged to confess on cross-examination that for anything he knew the young ladies paid full value for this extra accommodation, and so the law had not been violated, nor had the special case been the fruit of competition.

In examining this witness, the appellant, to prove the advantages of the now suppressed competition, labored to show that before the merger the companies had given the Normal School girls free seats in parlor cars, and other conveniences, for which the general public were charged. The witness could not testify to a personal knowledge of any such illegalities.

One cannot read the evidence on this point without getting the impression that what the State is com-

plaining of is the abolition of a competition carried on by practices forbidden by law—a singular position for the law officers of the State.

But they are driven to this because under the State railway law, as under the Interstate Commerce Law, there can be no real competition between railways that is not illegal and dishonest.

Argument.

The plaintiff sues on several grounds and in more than one capacity.

1. In respect of the swamp lands, as a trustee under the act of congress making the grant, for relief against a threatened obstruction to the performance of the trust.

2. As a property owner and shipper, for relief against the violation of rights claimed to be secured to it.

(a) By the interstate commerce act.

(b) By the federal anti-trust act.

3. As a sovereign state to enjoin the violation of certain of its own statutes forbidding the consolidation of competing railway companies, and forbidding combinations in restraint of domestic and interstate commerce.

I.

The claim under the swamp-land grant.

The original act of 1850 (9 U. S. St. 549) which the plaintiff makes part of its bill (par. V. p. 18*a*) grants to Arkansas all the swamp lands in that state "to enable the state of Arkansas to construct the necessary levees and drains to reclaim" them, "*provided*, however, that the proceeds of said lands, whether from sale or by direct appropriation in kind,

shall be applied exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid."

By the act of March 12, 1860, cited in the bill, the provisions of this act were extended to Minnesota, and the state has over 3,000,000 acres derived from this and from other grants (Bill, par. V, p. 18*a*).

It is not denied by the defendants that the state holds these swamp lands charged with a trust (though a trust in favor of the United States alone, and for the exercise of which congress alone can call the state to account). *Stearns v. Minnesota*, 179 U. S. 223, 231.

And with this trust, the acts of congress also make the state an agency of the United States to carry out the purpose of the latter by effecting a drainage of the swamp lands with the proceeds of lands sold, an agency not easily distinguishable from that of a telegraph company under the act of 1866, or a railway company chartered by congress. *W. U. Tel. Co. v. City Council of Charleston*, 56 Fed. 419; *W. U. Tel. Co. v. Texas*, 105 U. S. 450; *Thomson v. Pacific Rd.*, 9 Wall. 579.

And it may be that the state can sue in equity to enjoin or remove obstructions to the execution of the trust, to the performance of the duties with which it is charged by the act of congress.

But such suit can only be maintained upon a case sufficient, under ordinary principles of equity, to entitle plaintiff to a decree. Here the proof wholly fails. There is no pretence of any direct obstruction of the sales of swamp lands, or the use of their proceeds. The most that is said or can be said is that the railway companies during the five months that elapsed between the formation of the Securities Co. and the beginning of this suit, did not build branches

into these lands. That is, they did not, during these five months, do what thay and their predecessors had continuously omitted doing during all the years of their existence, during all the time when, as the bill says, they were in "active competition." If such omission has gone on for more than 20 years, without actionable injury to the state, and, so far as appears, without any complaint by the state, it cannot be that the mere continuance of it since November 13, 1901—even its continuance to the present time—is an obstruction to the execution of the trust, or in any wise an injury to the state entitling it to an injunction. The state has made no demand that any particular branch or any branch should be built. It has not shown that any particular branch is needed or desirable, or that such branch offers such prospect of traffic as to justify its construction. Neither railway company is under any obligation to build branches. Neither has any inducement to build them except the prospect of fairly remunerative traffic from them. That inducement will be as strong, and the branches are as likely to be built, if the majority of the railway companies stock is owned by the Securities Co. as it would be if the railway companies were made up of wholly different stockholders, and were engaged in diminishing their ability to build the desired branches by unprofitable competition.

At the most the showing made by the plaintiff of injury from the formation of the Securities Co. is wholly conjectural. Plaintiff conjectures that there will be a falling off of railroad building owing to the formation of the Securities Co.—that the companies will be less ready to build unprofitable lines. Another might conjecture, and with as much ground, that any

such falling off in building branch lines is owing to the continued pressure of the public and the railroad commissioners upon the companies, continually crowding down the rates, and sometimes crowding them down so far that the companies have to seek protection in the courts, and have little inducement or ability to engage in new construction.

II.

The State as Land Owner and Shipper.

What has already been said applies equally to the case made by the state in these two capacities. In these capacities the state stands on the same footing as an individual and must make the same case that would be required of an individual land owner and shipper.

The right to unrestricted interstate commerce is secured by the interstate commerce law and the anti-trust law.

But while the state alleges itself to be engaged to interstate commerce, and that the defendants have made a combination in restraint of interstate commerce and in violation of the anti-trust act, and are pooling the earnings of the two railway companies in violation of the interstate commerce law, yet the proofs fail to sustain plaintiff's right to equitable relief on any of these grounds.

Plaintiff has not proved any injury to itself not common to every land owner and shipper in Minnesota, and to every person in Minnesota or out of it, who is

likely in the future to make any shipments, great or small, over either railway. For there is no proof that that the plaintiff has been already overcharged on any shipment it has made ; or that either railway company has threatened to overcharge it in any shipment it is about to make in the near future. But it is charged that a combination has been made whereby competition is suppressed, and that from the infirmity of human nature the railway companies will no longer compete with each other, but will unite in charging higher rates than if competition continued.

There is no proof of suppression of competition. The proof is that it is as active as ever (Mr. Mellen, 605–7 ; Mr. Morgan, 521, 523 ; Mr. Hill, 946).

There is no proof of an advance in rates ; the proof is the other way (Mr. Hill, 933, 979–80). There is no proof that the companies have charged or threaten to charge unreasonable rates. Presumably they have charged and will continue to charge only what is reasonable. In such case neither plaintiff nor any other shipper will suffer injury, for no shipper has any legal or equitable right to have his freight moved at less than a reasonable rate.

There is no proof of a demand on the companies for either a present or future carriage, or a demand by them of unreasonable rates, or a threat by them of charging such rates. An intending shipper (whether having made shipments in the past or not) is not entitled to an injunction in advance of making or tendering a shipment, on the ground that, at some time in the future, when he comes to make shipments, there will be danger lest the companies, because of non-competition, may charge him an unreasonable rate.

III.

The suit by the state as a sovereign to enforce its own statutes.

The statutes, pleaded in the bill of complaint are of two classes, (1) statutes forbidding the consolidation, etc., of parallel or competing railway companies or their lines. (2) An anti-trust act, the general terms of which are claimed by plaintiff to include railway companies and railways and the stock ownership therein.

A. The Anti-Consolidation Laws.

(1)

The earliest Minnesota statute on the subject of railway consolidations was passed in 1860, being Chapter 70 of the General Laws of that year. At the time of the Revision of 1866 it was still in force and unchanged, and was carried into that Revision without alteration, as Section 36 *et seq.*, of Gen. St., 1866, c. 34, which section and an additional section (39) in *pari materia* are as follows :

> SEC. 36. Whenever the lines of railroad of any railroad corporation, whether organized under this title, or by virtue of a special charter, or any portion of such lines, have been or may be constructed so as to admit the passage of freight or passenger cars over any two or more of such roads, continuously, without break or interruption, *such corporations may consolidate themselves into a single corporation*, in the manner following :
>
> FIRST. Any two or more railroad corporations may, *by their directors*, enter into an agreement, under the corporate seal of each, for the consoli-

dation of the said corporations, prescribing the terms and conditions thereof; the mode of carrying the same into effect; *the name of the new corporation;* the names and places of residence, and number of directors thereof; the time and place of holding the first election of directors; the number of shares of capital stock in the *new corporation;* the amount of such shares, which shall not be less than one hundred dollars; the manner of converting the shares of capital stock of each of said two or more corporations into the shares of such *new corporation;* the manner of compensating stockholders in each of the *old corporations*, who refuse to convert their stock into the stock of the *new corporation;* with such other details as they may deem necessary to perfect the *consolidation* of such corporations; and such *new corporation* shall possess all the powers, rights and franchises conferred on each corporation, and be subject to all the restrictions, and perform all the duties, imposed by the provisions of this title; provided, that all stockholders in either of such corporations, who refuse to convert their stock into the stock of such *new corporation*, shall be paid at least par value for each of the shares so held by them, if they so require, previous to the consummation of said consolidation.

SECOND. Such agreement of the directors shall not be deemed to be the agreement of the said *old corporations*, until after it has been submitted to the stockholders of each of said corporations, separately, at a meeting thereof, to be called upon a notice of at least 30 days, specifying the time and place of such meeting, and the object thereof, to be addressed to each of such stockholders, when their place of residence is known, and deposited in the post-office, and published for at least three successive weeks in one newspaper, in at least one of the cities or towns in which each of said corporations has its principal place of business, and is sanctioned by such stockholders, by a vote of at least two-thirds in amount of the stockholders present at such meeting voting by ballot, either in person or by proxy, each share of capital stock being entitled to one vote; and when such agreement of the directors is so sanctioned by each of the meetings of the stockholders separately,

it shall be deemed the agreement of the said old corporations.

SEC. 37. Upon making the agreement mentioned in the preceding section, in the manner required therein, and filing a duplicate or counterpart thereof in the office of the secretary of state, *the said old corporations shall be merged in the new corporation* provided for in such agreement, to be known by the corporate name therein mentioned; and the details of such agreement shall be carried into effect, as provided therein.

SEC. 38. Upon the election of the first board of directors of *the corporation created by said agreement*, the rights and franchises of each of said old corporations, their rights and interests in and to every species of property, real, personal and mixed, and things in action, shall be deemed to be transferred to and vested in such *new corporation*, without any other deed or transfer; and such *new corporation* shall hold and enjoy the same, together with the right of way, and all other rights of property, in the same manner, and to the same extent, as if the said old corporations had continued to retain the title and transact the business of such corporation; and the titles and real estate acquired by either of said old corporations shall not be deemed to revert or be impaired by means of anything in this title contained; *provided*, that all rights of creditors, and all liens upon the property of either of said old corporations, shall be preserved unimpaired; and all the debts, liabilities and duties of either company shall thenceforth attach to such new corporation, and be enforced against the same, to the same extent, and in the same manner, as if such debts, liabilities and duties had been originally incurred by it.

"SEC. 39. Any railroad corporation heretofore or hereafter incorporated, whether under the provisions of this title or by special charter, may at any time, and by means of subscription to the capital of any other corporation, or otherwise, aid such corporation in the construction of its railroad for the purpose of forming a connection of said last-mentioned road with the road owned by the corporation furnishing said aid; or any railroad corporation may lease or purchase any part or all of any railroad constructed by any other cor-

poration whose lines of road are continuous *or connected* with its own upon such terms and conditions as may be agreed on; or *any two or more railroad corporations whose lines are so connected may enter into any arrangement for their common benefit, consistent with and calculated to promote the objects for which they were created; provided,* that no such aid shall be furnished, nor any purchase, lease or arrangement perfected until a meeting of the stockholders of each of said corporations has been called by the directors thereof at such time and place and in such manner as they shall designate, and the stockholders of at least two-thirds of the stock of such corporation represented at such meeting in person or by proxy, and voting thereat, assented thereto."

It will be noted that the only "consolidation" authorized by this law—the only consolidation authorized by any law of Minnesota then in existence—was a consolidation requiring

1. An agreement between the two corporations, as such, made by corporate action of each corporation, *first*, of the board of directors as a board, and, *second*, of the shareholders at a corporate meeting.

2. The filing of such agreement with the Secretary of State.

3. Payment of the value of their shares to such shareholders of either corporation as refused to come into the consolidation.

The effect of the consolidation was the formation of a "*new corporation*," in which "the said old corporations shall be merged."

(2)

These sections being in force without change, and being the only legislation of Minnesota on the subject

of consolidation of railway companies, etc., the Legislature, in 1874, passed the following Act (Laws 1874, C. 29, § 1):

> "SECTION I. No railroad corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line; and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues."

This statute is directed at *railway corporations*, their lessees, purchasers or managers. It says that no one of these shall—

(1) Consolidate the stock, property or franchises of the railroad corporation with any other railroad company owning or having under its control a parallel or competing line; or (2) in any way control *any other* railroad corporation owning or having under its control a parallel or competing line.

To bring any transaction within this act the parties to it must be, on the one hand, a railroad corporation or the lessees, purchasers or managers of a railroad corporation, and, on the other hand, another railroad corporation, owning or having under its control a parallel or competing line.

In this case the transaction is between the Securities Co., as buyer, and certain shareholders of the two railway companies as sellers of their shares. The Securities Co. is not a railroad corporation, and the selling

shareholders certainly are not. Nor are the Securities Co. or the sellers "the lessees, purchasers or managers of any railroad corporation."

There is no question of "lessees."

The Securities Co. is not the "purchaser" of any railroad corporation. If it is, when did it become so? Was it such before it bought any of the railway shares? Or did it become a purchaser of the Northern Pacific Co. as soon as it bought one share, or ten shares, or one-half of that company's stock? And if a purchaser of one-half of the shares of the company's stock would not make it a purchaser of the company, how can it be said that the purchase of three-quarters or nine-tenths would? In each of these cases how can the Securities Co. be said to have bought *the company*, when one-quarter, or one-half, or one share less than half of all the stock has not been bought by it? Is not all the stock not purchased still stock of the *company*? Are not its owners still shareholders and members of the corporation, with all the property and other rights of members?

One-half or three-quarters or nine-tenths of the shares in a corporation are not the corporation, and a purchaser of them does not buy the corporation.

Counsel for appellant argues (Brief, pp. 100–103) that whoever purchases a majority of the stock of a railway company is a purchaser of the corporation, because of two decisions, one in New Jersey and the other in Indiana, which, however, decide nothing of the kind.

In the New Jersey case one railway company had acquired fifteen-seventeenths of the stock of another, and had mortgaged it. The question was on the valid-

ity of its title to and its mortgage of the stock. The Court held that while the company was authorized by statute to buy *all* of the stock of another company in order to a consolidation, it did not have to buy all the stock in one purchase, but might make successive purchases of less than all as steps toward a consolidation.

In the Indiana case the question and the ruling were the same. It was decided on the authority of *Ryan vs. Leavenworth*, etc., Ry. Co., 21 Kansas, 365.

These decisions rest on the axiom that the greater power includes the less. But plaintiff's contention is that the less equals the greater—a purchase of a part is a purchase of the whole. To this proposition neither the cases cited nor any others give support.

Like observations apply to the amendment of 1889 to the Minnesota Act of 1881, quoted in Appellant's Brief, p. 103, with the addition that it is a misleading misuse of terms to describe the arrangement of various separate laws and parts of laws in a private compilation (and such is "Gen. St. 1894") as being thereby "codified."

That amendment provides that a railway company authorized to consolidate its property and franchises with those of another railway company, or to purchase the property and franchises of another railway company, "may effect such consolidation or purchase by acquiring the stock, bonds or other securities of such other railway company."

But can it be contended that a purchase of less than *all* the stock would effect a consolidation of the two companies, or of their property or franchises?

The act says "the stock," not a majority of the stock. If satisfied by the purchase of less than all the

shares, it is satisfied by the purchase of one share. There is no point between the purchase of one share and a purchase of all at which a line can be drawn, and it can be said that a purchase of more is enough and a purchase of less is not enough "to effect such consolidation."

And it is to be observed that it is only when a railway company *is* "*authorized to consolidate or purchase*" that this act allows such purchase to operate as a consolidation of the purchasing company and that whose stock is bought.

A purchase even of *all* the stock of two railway companies by an individual, or by a corporation not a railway company, does not effect a consolidation between the buyer and the company whose stock is bought; and it is only when the stock is bought—and bought by a railway company—for purposes of a consolidation between the buyer and the company whose stock is bought that the statute makes a purchase of stock equivalent to a purchase of the property and franchises of the company.

The Securities Co. is not the "managers" of either of the defendant railway companies. It is simply a shareholder, and the term "managers" is never applied to the shareholders. They do not manage. Their function—and their sole function—as respects the management of the company's affairs, is to choose managers. Those managers are usually called directors; by charter or other law they are in some cases styled "trustees," in others "managers." The shareholders are not the managers (*Pullman Palace Car Co. vs. Mo. Pac. Ry. Co.*, 115 U. S., 587, 596-7).

And by "managers," in this act, the legislature

meant those who manage the business, by whatever name called. In the general railway law of the State, in force ever since 1866, it is required that the articles shall state:

> "SIXTH. The names of the first board of direc'ors and in what officers or persons the government of the corporation and the management of its affairs shall be vested, *and when the same shall be elected*" (Gen. St. 1866, C. 34, § 3.

And in the case of each of these companies, the charter provides who shall be the managers, and they are not the whole body, nor yet the majority of the stockholders. And they are to be managers, not because owners of stock, but because chosen to be managers.

The Great Northern charter (Defts.' Ex. D, p. 1100) provides:

> "All the affairs and business of the said company shall be conducted by or under the direction of the board of directors, and they are authorized, for the purposes specified in this act, to make and establish regulations and by-laws, and to do all things not inconsistent with the Constitution and laws of the United States, or the laws of this territory or this act."

That of the Northern Pacific (Defts.' Ex. E, p. 1129) provides:

> "SECTION 9. All of the affairs of said company shall be managed by a board of directors who shall be stockholders, and who are hereby invested with all the powers of the corporation save as hereinafter provided."

Each charter goes on to provide for the choosing of the directors by the shareholders.

The prohibition laid on the "managers" by this Act of 1874 is imposed on them *as a body* and not as individuals. The reason, doubtless, being (if the Legislature did anything more than copy—as it did copy *verbatim*—this act from an enactment of another State) that any control of one railway company by another must necessarily be exercised by the Board of Directors of the latter, and that in proceedings for consolidation under the General Statutes of 1866, the initiative must be taken by the Board of Directors.

Taking this act as a whole, it is evident that it simply restricts the exercise of powers granted by the sections of the General Statutes of 1866 already quoted. Those powers could not exist or be exercised without that grant, and it would be absurd for the Legislature to take away or forbid the exercise of powers that did not exist. The Act of 1866 is broad enough to authorize the doing of every one of the things forbidden by the Act of 1874. The latter act is a restriction of the former, taking away powers given by it and taking them away from those to whom they had been given by it. The Act of 1866 did not give to shareholders in one railway company any power to buy shares in any other. Such power needed not to be given; it existed without any such gift. And so the Act of 1874 was not meant to take it away.

But whether or not the Act of 1874 can be given the sweeping effect claimed for it by the State, it does not indicate any settled policy of the State, and it long since ceased to be the law of the State. It was not in line with the general policy of the State; it was a sporadic exception to that policy, and was passed in

the height of the Granger agitation, when any law that would hurt railway companies was a good law to pass, and when not only legislatures but some courts were swept off their feet by the popular wave.

This war upon the railroads had its natural effect. For years Minnesota went hat in hand, begging capitalists to undertake the completion of unfinished roads endowed with large land grants by the United States. Their appeals were in vain, and even the gaps in the line connecting St. Paul with the Park region—the garden of the state—and with the Red River valley, remained open, a line which is now part of the main line of the Great Northern Company between St. Paul and Puget Sound.

Not until Mr. Hill and his three associates caused this line to and through the Red River Valley to be completed by the United States Circuit Court by its Receiver in 1878-9, with money furnished by them, was any railroad building done in Minnesota.

Like other delusions, the delusion that railway companies were enemies of the people passed away—at least for a time—and at its next biennial session, in 1881, the legislature signalized itself by doing away with the worst of the legislation against railways, including that which had placed on Minnesota the stigma—borne for 20 years—of being a repudiating State. The people had recovered their sanity, and their recovery was shown by a recurrence to the wiser counsels of earlier days.

Among the laws which felt the effect of this recovery was that of 1874. It was not in terms repealed. That was hardly to be expected, nor was it necessary. It was superseded by a clearly-expressed section in a carefully drawn act, based on the General Statutes of

1866 already set forth, extending the provisions of that act so as to include foreign railway companies, and covering the whole subject of railway consolidation.

(3)

This Act of 1881 (Laws 1881, c. 84) is entitled "An act to authorize any railroad company to lease, purchase, or in any way become owner of, or to control, any other railroad corporation, or to consolidate therewith."

The first section provides:

> "Any *railroad corporation*, either domestic or *foreign*, whether organized under a general law or by virtue of a special charter, may lease or purchase, or in any way become owner of, or control or hold the stock of, any other railroad corporation when their respective railroads can be lawfully connected and operated together so as to constitute one continuous main line with or without branches."

Section 2 provides as follows:

> SECTION 2. Any railroad corporation, whether organized under a general law, or by virtue of a special charter, of the state or territory of Minnesota, or under the laws of any other state or territory, whose lines of railroad now or hereafter constructed, within or without the state, can be lawfully connected and operated together, to constitute one continuous main line, with or without branches, so as to admit the passage of trains over them without break or interruption, *may consolidate* their stock and franchises, upon such terms as may be agreed upon, *so as to become one corporation*, by any name by them selected.
>
> Articles stating the terms of consolidation shall be approved by each corporation, by a vote of the stockholders owning a majority of the stock, in person or by proxy, at either a regular annual

meeting thereof, or at a special meeting called for that purpose, by a notice of at least thirty (30) days, stating the object of such meeting, to be addressed to each of such stockholders, when their place of residence is known, and deposited in the post office and published for at least three (3) consecutive weeks in one newspaper, in at least one of the cities or towns in which each of said corporations has its principal business office, or by consent in writing of a majority of such stockholders annexed to such articles; a copy of such articles of consolidation, and of the record of such approval, or of such consent, accompanied by lists of the stockholders of said corporation, and the number of shares held by each, duly certified by their respective presidents and secretaries, with the respective corporate seals thereto affixed of said corporations shall be filed for record in the office of the Secretary of State of this state, and of the State or States or Territories by or under whose laws the said corporations, parties of such articles of consolidation were created or exist, before any such consolidation shall have any validity or effect. Upon the filing for record of said copies, *the said corporations shall become merged in the new corporation* provided for in said articles, to be known thereafter by the corporate name therein adopted, and shall, within this state, succeed to all the rights, powers, franchises, contracts, privileges, immunities, liabilities, obligations and duties, liabilities to or exemptions from taxation, commutations, property, real, personal, and mixed, and things in action, as fully in all respects as the same were possessed by such old corporation or corporations, at the time of such consolidation under the laws of this state; and such *new corporation* shall hold and enjoy the same, and all and every part thereof, without impairment or change, as fully as if the said consolidation had not taken place. Provided that all rights of creditors, and all liens upon the property of either of said old corporations shall be preserved unimpaired, and all debts, liabilities and duties of either of said consolidating corporations shall thenceforth attach to said *new corporation*, and be enforceable to the same extent, and in the same manner as if such debts, liabilities, and

duties had been originally incurred by it; provided further, that all such corporations shall be subject to the laws of this state, and the jurisdiction of the courts of this state, in the same manner and to the same extent as domestic corporations."

Section 3 is as follows:

"SECTION 3. *No railroad corporation shall consolidate with, lease or purchase, or in any other way become owner of, or control, any other railroad corporation, or any stock, franchises, rights or property thereof, which owns or controls a parallel or competing line.*"

It is evident that this Act of 1881 is a recension and revision of the existing legislation of the State in respect to the consolidation of railway companies and the relation of competing companies, and their managers, etc., both in regard to the powers granted and those denied, the acts authorized and those forbidden.

It enlarges the Act of 1866, which was restricted to domestic companies, by authorizing consolidation with foreign companies.

It contains, in section one, new provisions in terms authorizing one company, domestic or foreign, to lease or purchase or in any way become the owner of or control another, or to hold the stock of another.

It contains in section 2 various modifications of the procedure by which a consolidation may be effected.

And as sections one and two state clearly and particularly just what powers are granted and what acts may be done in the exercise of them, so section 3 states with equal clearness and particularity what powers are withheld and what acts may not be done.

In this section it omits the prohibition to "mana-

gers " of a railroad company because included in the prohibition to the company. It omits the prohibition to lessors and purchasers probably for the same reason, and perhaps on the additional ground of its vagueness and uncertainty.

The act covers the whole ground before occupied by the sections 36-39 of the General Statutes of 1866 and the Act of 1874, and it covers more.

And under the familiar rule of construction, so often applied by this and other courts, this Act of 1881 must be deemed a substitute for the previous legislation and to repeal it.

The case of *Murdock vs. City of Memphis*, 20 Wall, 590, is directly in point, and the observations of Mr. Justice MILLER on the statutes there involved are strikingly applicable to those in question here. And see

Heckmann vs. Pinkney, 81 N. Y., 211.
Farr vs. Brackett, 30 Vt., 344.
Wakefield vs. Phelps, 37 N. H., 295.

In 1889, Section 2 of the Act of 1881 was amended by adding the following (Laws 1889, c. 228):

> Any railway company of this state, empowered by the laws thereof to consolidate its railway, property and franchises, or any portion thereof, with the railway property and franchises, or any portion thereof, of another railway company, may effect such consolidation or purchase, by acquiring the stock, bonds or other securities of such other railway company; and for the special purpose of acquiring the same, may create, issue and dispose of its own stock, bonds or other securities, in addition to the amounts of the same it is otherwise empowered to issue, to an amount not exceeding the actual value of the stock or bonds of such other company, acquired by it. Any railway com-

pany of this state may also, for any other purpose authorized by its acts or articles of incorporation, create, issue and dispose of such amounts of stock as the boards of directors may find necessary for such purpose. Prior to the issuance of any stock under the provisions of this act, the company issuing the same shall file with the secretary of state a duly authenticated resolution of its board of directors, stating the number and par value of the shares to be issued, and the particular purposes for which the same are to be issued.

Provided, That nothing in this act contained shall authorize any railway company to sell its capital stock for less than full par value thereof, in money, property, work or services.

Provided further, That nothing in this act shall be so constructed as to authorize the issuance or sale of any stock or bonds, by any such company, or the performance of any act, prohibited by chapter twelve (12) of the general laws of one thousand eight hundred and eighty-seven (1887), or by any other law of this state relating to the issuance or sale of the stock and bonds of any railway company therein.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved April 24, 1889.

(NOTE. Chap. 12, Laws 1887, referred to in the foregoing act, was entitled "*An act relative to the issue of false, fraudulent, and part-paid and unpaid shares of stock of railroad companies and providing a penalty therefore.*" The title of the act sufficiently discloses the nature of its contents.)

This act is relied on by appellant to show that a mere purchase of a majority of the stock of a railway company by another company consolidates the two companies, and has already been referred to *supra* in our refutation of any such doctrine. It will be noted that the act requires the purchase of *all*, and not merely a majority of the stock, and does not dispense with the vote of the shareholders of both companies required by the same section as originally passed.

By the first section of the Act of 1881, a railway company was already authorized to buy the stock of any company with which it might lawfully consolidate, and the purpose of this section was not to give an already-existing authority, nor to make such purchase operate as a consolidation, but to permit the consolidation to be effected by votes of the stockholders of the two corporations, as provided in Section 2, notwithstanding that the shares of one company were all held by the other, and to prevent any objections that might, on that ground, be made to the consolidation.

(5)

By an act approved April 15, 1899 (Laws 1899, C. 229), and not referred to in the bill, Section 1 of the Act of 1881 was amended "so as to read as follows:"

> SECTION 1. Any railroad corporation, either domestic or foreign, whether organized under a general law, or by virtue of a special charter, may lease or purchase, or in any way become the owner of, or control, or hold the stock, of any other railroad corporation, when their respective railroads can be lawfully connected and operated together, so as to constitute one continuous main line, with or without branches, and in case such lease or purchase shall be made by a foreign corporation, such corporation shall have and possess the same rights, powers and privileges, and be subject to the same duties, obligations and liabilities, in respect to the railroad so leased or purchased, as the corporation from which such lease or purchase shall have been made.
>
> *Provided further*, that any railroad so purchasing or leasing shall be subject to any law of this State now in force, or hereafter enacted, relating to taxation of the property so leased or purchased.
>
> *Provided*, in case such lease or purchase shall be made, or such ownership or control had, by a

foreign corporation, the same shall not be deemed complete or effectual for any purpose, until such foreign corporation shall have first complied with all laws of this State pertaining to foreign corporations.

Provided further that no railroad corporation shall consolidate with, lease or purchase, or in any way become owner of or control, another railroad corporation, or any stock, franchises, rights, or property thereof, which owns or controls a parallel or competing railroad, to and with the railroad owned or controlled or operated by such leasing or purchasing railroad corporation; and the question whether any such railroads are parallel or competing lines, shall, when demanded by the party complaining, be decided by a jury, as in other civil actions.

A comparison of the last proviso with the previous legislation on the subject shows that it was based on this legislation, covers the same ground and the whole of it, with the additional prohibition where a road is merely "operated" by the purchasing company. This act, therefore, supersedes the former legislation, for which it is a substitute.

(6)

The scope and meaning of these enactments are too plain to admit of question. They deal wholly with railroad corporations (even the act of 1874 goes no farther than to forbid "the lessees, purchasers or managers of any railroad corporation") and (in respect of office-holding) the officers of competing railroad corporations.

They nowhere forbid the shareholders or any of them in one railway company from purchasing a part or even the whole of the shares of a competing company.

Section 3 of the act of 1881 forbids a "*railroad corporation*" from purchasing or in any way becoming the owner of stock in any competing railroad company. It cannot hold *even a single share*, "Railroad corporation" does not mean stockholder or even all the stockholders in a railroad corporation, nor does it mean any other corporation than a railway corporation. To hold otherwise would violate the rudimentary principles of construction—would be to legislate and not to construe. And if "railroad corporation" in this section means an individual or a combination of individuals, or a corporation other than a railway company, then no individual or insurance or investment company nor any charitable society holding one share in a railway company, can acquire, by gift, purchase or bequest, a single share in a competing company. And if "railroad corporation" means individual, means every kind of corporation, then the act forbids any individual or corporation from acquiring one share of stock in any corporation if it already holds one share in a competing company.

True, the act is limited to owning stock in a railroad corporation, and a railroad corporation owning or controlling a parallel or competing line. But, if the "railroad corporation" which is forbidden to *purchase* means also individuals, means corporations of every sort, the same term must have the same enlarged meaning in the description of the thing forbidden to *be purchased*. If it be objected that in this last clause the description is limited to railroad corporations *owning or controlling a parallel or competing line*, it is enough to say that a construction that turns individuals and investment companies and charitable and educational societies into railroad companies where

they are buying stock, can have no difficulty in enlarging railroad corporations with competing lines into any desired variety of corporations with or without lines.

Such is the necessary result of the construction—or rather the legislation—asked by plaintiff, and by which it claims that in each case a great evil—the owning of stock by anybody, individual or corporate, in competing companies of any kind, and the suppression of competition to which such ownership (even of one share) necessarily tends—will be struck down, and the great policy of the common law vindicated.

True, such construction makes a law the legislature never passed, and, so far as appears, never thought of passing. But then, as plaintiff says, the legislature probably would have passed such a law if they had thought of it; and any one buying shares in two competing railway companies must have known that he was evading a wholesome and salutary statute which the legislature would certainly have enacted if it had occurred to them to do so.

If the legislature had intended to include individuals, or corporations other than railway companies, in the prohibition directed against those companies, it would have done so in plain terms. It designates, in the act of 1874 "railroad corporations" and their "lessees, purchasers or managers," and forbids them, and them only, to lease or purchase the works or franchises of, or in any way control any competing company.

The insertion of the two words "or stockholders" (which would include corporate as well as individual stockholders) was all it needed to do to express

the intention now claimed for it by the state; and it is hard to conceive that it had the intention and yet refrained from so easy an expression of it.

The prohibition in the act of 1881 is directed *solely to the railroad company:* "No railroad corporation shall consolidate with, lease or purchase or in any way become owner of * * * any other railroad corporation or any stock * * * thereof, * * * which owns or controls a parallel or competing line."

Here again the words "or any of its stockholders," or like words, after the words "No railroad corporation," could not have been omitted had the legislature intended to include the stockholders in the prohibition.

The act of 1899, which really supersedes the earlier laws on this point, is also limited to corporations. It forbids a *railroad corporation* to buy, own or control *a single share* of a company having a parallel or competing line. If it is aimed at purchases by individuals, or by other than railroad companies, then no individual or investment company, or charitable or educational corporation, owning one share in the Great Northern Co. can buy or "in any way become owner"—not even by bequest—of a single share in the Northern Pacific Co.

But if the legislature had had any such intention, they would certainly have expressed it by designating stockholders and corporations generally as objects of the prohibition.

The position now taken by the state assumes that the legislature intended all that would have been expressed had these words "stock" and "stockholders" been used. That is that the legislature sup-

posed that "railroad corporation" meant every individual, every combination of individuals, every sort of corporation that might attempt to acquire, or was liable to receive by gift or bequest, stock—one share or many—in two competing railway companies. But there is no ground for imputing to the legislature so unwarrantable an amount of stupidity—an amount verging on monopoly. And a construction that necessitates such an imputation must be rejected.

(7)

If any doubt could remain that these laws contain no limitation of the right of corporations other than railway corporations to own stock, the legislature of Minnesota, as if to settle that doubt, passed chapter 86 of the laws of 1903, which reads as follows:

> "An act to prohibit the consolidation of capital stock, lines, property, franchises, control, or the power of control, of parallel or competing lines of railroad."

"*Be it enacted by the Legislature of the State of Minnesota.*

> "SECTION 1. The consolidation of the capital stock, lines, property, franchises, control, or the power of control, of two or more parallel and competing lines of railroad in the hands of any corporation, trustee, agent or representative of any corporation, wheresoever situated, is hereby prohibited and made unlawful.
>
> "SEC. 2. This act shall take effect and be in force from and after its passage."

This law was passed since this suit was brought, and so it may be presumed that its language, hardly less vague than that of the Act of 1874, was intended to

prohibit such purchases as that here in question. If this be so, the act is a legislative declaration that the prior statutes will not bear the interpretation which plaintiff seeks to place upon them in this suit. For if prior statutes covered the subject, why pass this statute? The case is as if this statute contained an express recital that there was no existing law covering the ground. And while the legislature cannot conclusively determine the meaning of prior laws, this being for the court, still where the meaning of a prior law is doubtful, legislators' interpretation as evidenced in other laws is of the highest value and entitled to great weight.

(8)

In this case all the acts complained of have been acts of the shareholders alone, and of a part only of the shareholders.

The original "combination" was formed by men holding not to exceed 35 millions of the 125 millions of the Great Northern capital stock, and 41 millions of the 80 millions of common stock of the Northern Pacific Co., whose capital also included 75 millions of preferred stock, with the same voting power as the common.

This was the aggregate holding of all those who can be said to have been in any way concerned in the "combination" at the time the Securities Co. was formed. Soon after the formation of the Securities Co. and its purchase of the "Harriman stock," the combination transferred to it no more stock than they owned and could transfer—that is, not exceeding 28 per cent of Great Northern, and 27 per cent of Northern Pacific.

These transactions of shareholders, dealing solely with their own shares, were no more acts of either railway company than any other transfer of shares by individual shareholders to other individuals or to corporations.

Besides its purchase of the Harriman shares and shares held by its promoters, the Securities Co. made other large acquisitions of shares. In case of each acquisition it dealt with the seller directly and separately. The "combination" took no part in these transactions whether by urging or advising the holders to sell, or otherwise.

Here, too, the transactions were wholly between shareholders, with which the railway companies had nothing to do. And they were transactions which in no way affected the railway companies, or their franchises or powers or the exercise of either. Whether one set of persons or another holds a majority of the stock and so controls the corporations, and any transfer of stock by which such control may pass from one set of persons to another, are matters wholly for the persons engaged in them and with which the corporation has no concern. Certainly, the acts of less than the whole of the shareholders, relating wholly to the sale and purchase of stock, and in no wise imputable to the corporation.

And in this case there is direct and uncontradicted evidence that the railway companies took no part in any of these transactions (Mr. Hill, 121, 947; Mr. Mellen, 601–2, 1031).

(9)

And so this case is not within the series of recent cases in the state courts, which have been supposed to

hold that the action of *all* the stockholders separately, and not at a corporate meeting, is the action of the corporation—and this on the theory that the corporation is the body of the stockholders; that the artificial person chartered by the state is a mere fiction of law, and not a person at all; that it is the stockholders who do the business in the corporate name, (as they do in a partnership,) or through the corporation as a mere agent. But even these cases do not hold that the action of less than *all* the shareholders is imputable to the corporation. Nor do they hold that action even by all the shareholders, unless at a corporate meeting, is imputable to the corporation, where the subject matter of it is not business of the corporation, where it does not deal with the property or business of the corporation, but solely with the individual property of such shareholders, whether such property be shares of stock or anything else. This heresy has never been adopted or tolerated by the courts of the United States. If it is the stockholders, and not the corporation as a person distinct from them who carry on the business, how can a state exclude citizens of another state, and incorporated there, from carrying on an insurance business or any other not interstate business within her limits, which she permits her own citizens to carry on in a corporate name? What becomes of *Paul v. Virginia*, 8 Wall., and the many other cases that establish the right of a state to exclude foreign corporations though composed of citizens of sister states, on the ground that each such corporation is a distinct person from its shareholders, and that the business is that of the corporation and not of the shareholders and is carried on by the corporation and not by the shareholders?

In *Briscoe vs. Bank of Commonwealth*, 11 Pet., 257, the defendant was chartered as a bank of issue by the State of Kentucky, by its charter all its shares were to be (and they always were) held by the state, but without any payment for them. The bank issued its circulating notes, whose currency and credit necessarily depended wholly on the credit of the state. The court held that such notes were not "bills of credit" of the state, within the inhibition of the constitution, because, and only because, issued by and in the name of the corporation, and therefore not issued by the state, its sole stockholder.

The distinction has always been adhered to, in whatever form the question has been presented. From among many cases we cite:

U. S. Bank vs. Planters Bank, 9 Wheat. 904, 907.

Briscoe vs. Bank of Commonwealth, 11 Pet. 257, 323-6, 326-7.

Darrington vs. State Bank of Alabama, 13 How. 12, 15-17.

Curran vs. State of Arkansas, 15 How. 304, 309.

Van Allen vs. Assessors, 3 Wall, 584.

Paul vs. Virginia, 8 Wall. 168.

Delaware Railroad Tax, 18 Wall. 206, 229-231;

Gottfried vs. Miller, 104 U. S. 101, 128.

Pullman's Palace Car Co. vs. Missouri Pacific Ry. Co., 115 U. S. 587.

Gibbons vs. Mahon, 136 U. S. 549.

Humphreys vs. McKusick, 140 U. S. 304, 312.

Owensboro Nat. Bank vs. Owensboro, 173 U. S. 664, 676-683.

Cleveland Trust Co. vs. Landers, 184 U. S. 111, 115.

Morgan vs. Railroad Co., 1 Woods, 15; 17 Fed. Cas. No. 9806, per BRADLEY, J.
American Preservers' Union vs. Norris, 43 Fed. Rep. 711, per THAYER, J.
Central Trust Co. vs. Bridges, 57 Fed. 753 (6 C. C. A. 539).
Richmond Construction Co. vs. Mo. Pac. Ry. Co., 68 Fed. 105 (15 C. C. A. 289).
Fitzgerald vs. Mo. Pac. Ry. Co., 45 Fed. 812.
Baldwin vs. Canfield, 26 Minn., 43.
Winona & St. Peter R. Co. vs. St. Paul & Sioux City R. Co., 23 Minn. 359.

(10)

To overcome these obstacles to bringing the acquisitions of shares by the Securities Co. within the inhibition of the consolidation acts, it is charged (par. XVI, p. 35*a*) that the Securities Co. "is a railroad corporation, within the meaning of the laws of this state." This is an admission that it is only ownership of shares of one or two competing *railroad* companies by the other that is forbidden. But it is absurd to say that the Securities Co., which has absolutely no power to build or operate a railway, is "a railroad corporation," or one of two competing railroad corporations, within the meaning of the Minnesota law or any other possible meaning. Indeed, it is perfectly well settled in Minnesota that the character of any corporation, whether railroad or manufacturing, etc., depends wholly and solely on its charter or articles of incorporation and the purpose therein stated. If by those articles it is solely an investment and financial company, it would

not become a railway company though it should, acting *ultra vires* of its articles, build or operate railways. *Senour Mfg. Co. vs. Church Paint Co.*, 81 Minn. 294.

And so these consolidation acts when they mention railroad corporations mean those chartered or incorporated as such, and no others.

(11)

To overcome the same difficulty, the bill also charges (par. XI, p. 25*a*, fol. 100) a purpose on the part of the combination to "*evade*" these consolidation acts.

The two decisions of this Court about to be cited are a sufficient answer to this charge.

The statute forbids the doing of specific things by designated persons. The argument is, we suppose, that the laws were passed in pursuance of a general policy to prevent a single control by two competing railroad companies, and that the acquisition by the Securities Co. is within the mischief and the spirit of the law, and hence, though not within its terms, is an *evasion* of it.

But the only policy of the state which the court can recognize is that expressed in its statutes. Those statutes do not forbid every means by which a single interest may acquire control of two competing companies. They forbid such control of one railroad company by a competing railroad company, and forbid that only, and the policy of the state goes no farther than the statute. That policy we have already discussed.

Again, when a statute does not forbid results however reached, and does not forbid whatever acts

may effect such results, but merely forbids specific acts, it is no evasion of the statute to do acts other than those forbidden, though they effect and be intended to effect, such results.

It is *ultra vires* and hence illegal, even where it is not expressly forbidden, for a corporation to transfer its charter and franchises. But this does not prohibit the shareholders from selling all the stock to persons desirous of acquiring the charter. This act of the shareholders is lawful and not an evasion, though it produces the same result as the act which is forbidden.

The internal-revenue act required all bank checks to be stamped, under penalty. Receipts for sums under a certain amount did not require stamps. In lieu of drawing checks, and to avoid payment of the stamp tax, not a few depositors would present unstamped receipts to the bank for the amounts which they wished to draw. The receipt served the purpose of a check, it was used in the place of a check, it was so used to avoid the stamp tax imposed on checks, but its use was not an evasion of the act, because the act required checks to be stamped, and a receipt was not a check and so not required to be stamped. *U. S. vs. Isham*, 17 Wall. 496, 506; *Com. vs. New York, L. E. & W. R. Co.*, 132 Pa. 591 (19 Atl. 291). And see *Austin vs. Tennessee*, 179 U. S. 343, 383, per BREWER, J.

In the acts of the Securities Co. and its promoters there has been no subterfuge, no concealment. The real transaction is just what it appears to be. On its face it is either within the statutes or without them. The notion that to do a thing not forbidden by a statute, but which may produce the same result as the doing of the thing which is forbidden, is an

"evasion" of the statute, and is somehow prohibited by it as the doing indirectly of what the law forbids directly, is responsible for a good deal of loose argument and decision.

It has recently received its quietus in England by decisions of the House of Lords and Privy Council. *Sullivant v. Atty. Gen. of Victoria* (1901), A. C. 196; *Simms v. Register of Probates* (1900), A. C. 323.

(12)

In this case, at least, all questions under these consolidation acts are set at rest by two decisions of this court.

In *Pearsall v. Great Northern Ry. Co.*, 161 U. S., 646, it was a question whether the purchase of one half of the shares of the Northern Pacific Co. was a purchase by the Great Northern Co. or by its shareholders, and whether, in either case, it was forbidden by the acts in question. The court held that if the purchase were by the Great Northern shareholders, it would be valid, saying (p. 671):

> "Doubtless these stockholders could lawfully acquire by individual purchases or majority or even the whole of the stock of the reorganized company, and thus possibly obtain its ultimate control; but the companies would still remain separate corporations with no interests as such in common."

But the court held that the purchase was really by the Great Northern Co., which paid the entire consideration, and was, therefore, unlawful.

The question decided in the passage quoted was

much a question in the case, calling for a decision, as any other that was decided in it.

At the same time with the Pearsall case was decided *Louisville & Nashville Ry. Co. vs. Kentucky*, 161 U. S. 677. In that case the question was upon the purchase by the railway company of a parallel and competing line of railway, at a judicial sale. Upon the question here involved the court say (p. 693) :

> " It is true, as was observed in *Pearsall v. The Great Northern* that the stockholders of the L. & N. Co. may individually become the purchasers of the Chesapeake Co. at a judicial sale, and may organize a new corporation, but it would still be a corporation separate and distinct from that of the L. & N. Co. The inhibition of the constitution is not against the sale to individuals though they may chance to be stockholders in a competing line, but against the acquisition by a railway, in any form, of a parallel and competing line. If this could be evaded by going through the form of a judicial sale, the constitutional provision would be of no value."

Having, as thus declared, the right to buy as individuals, and then form a corporation, why may not the purchase be lawfully made in the first instance by a corporation formed for that purpose by those same individuals?

The State directly intervened in the *Pearsall Case*, and by its attorney-general took part in the argument in this Court (See 161 U. S. 653).

Had it afterwards questioned the correctness of the construction placed by the highest court in the land upon its statutes, or had it considered that, as construed by that court, they failed to effect the purpose or reach the end for which they were enacted, it would certainly have remedied, for future cases, that supposed error of the court, or that actual

defect in the statutes. It would, by appropriate legislation, have enlarged the prohibition which the court held was limited to purchases by a competing railway corporation, so as to make it include purchases by the stockholders of such corporation.

But the State did nothing of the kind. From 1896 to 1899, it tacitly acquiesced in the construction given to the statutes by this Court, and made no change in its legislation by amendment of those acts or otherwise. In a somewhat similar case where a decision of the Minnesota Supreme Court on a doubtful statute was questioned three years later in the same court, the court say that its former decision must have become generally known throughout the state, and add:

> "Yet in none of the several sessions of the legislature which have been held since this effect was given to the statute has it been changed in this particular, although several amendments have been made. It is fair to assume that if, in the administration of the law, the intention of the legislative department in so important a matter was being thus misinterpreted, such amendment would have been made as would have made the intention clear."
>
> Tripp vs. N. W. Nat. Bank, 41 Minn., 400, 402.

And on this ground the court adhere to its former construction as having been in effect sanctioned by succeeding legislatures.

But in this case, there has been more than mere tacit acquiescence and sanction.

In 1899 the legislature amended the act of 1881, by an act, already quoted, in terms embracing the whole subject of the purchase of the property or stock of

competing railway companies, and which must therefore, as already pointed out, be taken to supersede all former legislation on that subject.

In this act, the legislature, so far from extending to stockholders the prohibition contained in the former acts, (and which had been held in the Pearsall Case not to include stockholders—no matter how many of them—but the corporation alone) re-enacts the prohibition in the very terms which the Supreme Court had held not to include stockholders.

In thus enacting this statute in the very terms of former acts which had been construed by the Supreme Court in a suit to which the State itself had in that court been a party, the legislature did more than to tacitly acquiesce in the construction of the earlier statutes by the court in that case. It re-enacted the provisions of the earlier statutes in the very terms which the Supreme Court had construed. It re-enacted them *as thus construed*. It re-enacted the construction as well as the words construed, and adopted and affirmed that construction.

And so the decisions quoted are controlling here, not merely as decisions of the highest court, but as part of the very statute which the court is here called on to enforce.

> "It is a common learning, that the adjudged construction of the terms of a statute is enacted, as well as the terms themselves, when an act, which has been passed by the legislature of one state or country, is afterwards passed by the legislature of another. So when the same legislature, in a later statute, use the terms of an earlier one which has received a judicial construction, that construction is to be given to the later statute. And this is manifestly right. For if it were intended to exclude any known construction of a

previous statute, the legal presumption is that its terms would be so changed as to effect that intention."

Com. vs. Hartnett, 3 Gray, 450, 451, per METCALF, J.

"Where a known statute has been re-enacted in terms, its interpretation will be presumed to have been also adopted by the legislature."

Harrington vs. Smith, 28 Wis. 43, 67, per DIXON, C. J.

And see

Willis vs. Eastern Trust Co., 169 U. S. 295, 307–8.

Duramus vs. Harrison, 26 Ala. 326, quoted with approval by BRADLEY, J., in McDonald v. Hovey, 110 U. S. 619, 629.

So this was long since held and has always been the law in this State.

In *McNamara v. Minn. Cent. Ry. Co.*, 12 Minn., 269 (388) an attempt was made to obtain for certain statutory sections incorporated and re-enacted in the General Statutes of 1866, a different construction from that previously given them. This the court refused, saying (by WILSON, C. J.):

"This view would also be contrary to the settled practice and holding of the courts ever since the adoption of the Revised Statutes of the territory; and the legislature, in adopting these sections and incorporating them into the General Statutes, cannot be presumed to have used the words in a different sense from that given to them before the revision."

It is true that since this suit was brought, and in the present year, the legislature has changed the statutes, so as to include purchases by shareholders. This merely shows, as already pointed out, that the legisla-

ture of 1903 deemed it wise to include stockholders, and that it did not consider stockholders to be included in the existing law. It did just what the legislature of 1897 or 1899 or 1901 would have done had any of them been dissatisfied with the then existing law as construed in the Pearsall Case. And this confirms our argument that the failure of former legislatures to do what was done by that of 1903, (to say nothing of the affirmative action of that of 1899), shows that their views of policy were not the same as those of the legislature of 1903. They were satisfied with the law as construed by the Supreme Court, and so did not make the change which they, as well as the legislature of 1903, knew perfectly well must be made should it be deemed proper to prohibit stock purchases in one competing railroad company by the stockholders of another.

(13).

As against the construction of these acts according to the plain meaning as well as the judicial construction of their terms, the State urges that its own policy requires or at least permits an opposite construction—such policy being alleged in paragraph X of the bill of complaint. It has been shown that so far as the statutes of the state show any policy, it is the opposite of that claimed by it as applicable here. And in any case, as said by Justice FIELD, speaking for this Court, in *Hadden v. The Collector*, 5 Wall. 107, 111 :

> "What is termed the policy of the government with reference to any particular legislation is generally a very uncertain thing upon which all sorts of opinions, each variant from the other, may be

> formed by different persons. It is a ground much too unstable upon which to rest the judgment of the Court in the interpretation of statutes."

The foregoing passage is quoted with approval in *Bate Refrigerator Co. v. Sulzberger*, 159 U. S. 1, 37. In that case the court, construing a statute in language less clear than those here involved, says (p. 36):

> "In our judgment the language used is so plain and unambiguous that a refusal to recognize its natural, obvious meaning would be regarded as indicating a purpose to change the law by judicial action based upon some supposed policy of Congress."

And then, after quoting the above passage from *Hedden v. The Collector*, the Court quotes as follows from *Scott v. Reid*, 10 Pet. 524, 527:

> "Where the language of the act is explicit there is great danger in departing from the words used, to give an effect to the law which may be supposed to have been designed by the legislature. * * * It is not for the court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions."

(14)

Taking appellant's own view of the various acts, granting that the purchase of the majority of shares of a railway company *ipso facto* converts such purchaser into the railway company itself, as well as makes him a purchaser and manager of it—still there is nothing in the Act of 1874, or in the subsequent acts which in any way affects the right of the Securities Co. to make its

purchaser of Northern Pacific shares or to hold the shares so purchased.

The appellant's contention admits that prior to its purchase of *any* railway shares, indeed prior to its purchase of *a majority* of the shares of some railway company—the Securities Co. was not itself a railway company, or the purchaser, lessee or manager of any railway company.

This being so, it had the clear right to buy any or all the shares of any one railway company.

And if, having bought a majority of shares in one railway company, it thereby became that company or a purchaser, lessee or manager of it, the Securities Co. should thereafter buy shares in a competing company, such last purchase, even if forbidden by the acts under consideration, could not affect the validity of the earlier one.

A title to property lawfully acquired cannot, nor can the right to hold such property, be defeated or impaired by a subsequent and unlawful purchase of other property.

Even if lawful, the later purchase could not affect the earlier, and if unlawful and hence void, this would be an additional reason why it could not do so.

Now the first acquisition made by the Securities Co. was its purchase of the seventy-eight millions of Harriman stock in the Northern Pacific Co., on November 18th, five days after its organization.

At the time of this purchase the Securities Co. held no railway stock at all, and hence had a clear right to buy, and was not forbidden to do so by any of the acts.

If these acts forbade the subsequent purchase of any Great Northern shares whatever, or if any in excess of

one-half—that is of a majority—then to the extent of the prohibition any subsequent purchase of Great Northern shares would be unlawful.

But up to the prohibited limit, the Securities Co., though already the owner of a majority of Northern Pacific shares, might lawfully buy Great Northern shares.

And any such subsequent purchase of Great Northern shares would not preclude the Securities Co., already holding a majority of Northern Pacific shares, from continuing its purchases of the shares of that company.

It follows that the Securities Co.'s right to its Northern Pacific shares is not and cannot be in question in this suit.

B. The Anti-Trust Law.

(Laws 1899, C. 359).

SECTION 1. Any contract, agreement, arrangement, or conspiracy, or any combination in the form of a trust, or otherwise, hereafter entered into which is in restraint of trade or commerce within this state, or in restraint of trade or commerce between any of the people of this state and any of the people of any other state or country, or which limits or tends to limit or control the supply of any article, commodity or utility, or the articles which enter into the manufacture of any article or (of) utility, or which regulates, limits or controls or raises or tends to regulate, limit, control or raise the market price of any article, commodity or utility, or tends to limit or regulate the production of any such article, commodity or utility, or in any manner destroys, limits or interferes with open and free competition in either the production, purchase or sale of any commodity, article or utility is hereby prohibited and declared to be unlawful.

That when any corporation heretofore or hereafter created, organized or existing under the laws of this state, whether general or special, hereafter unites in any manner with any other corporation wheresoever created, or with any individual, whereby such corporation surrenders or transfers, by sale or otherwise, in whole or in part, its franchises, rights or privileges or the control or management of its business to any other corporation or individual, or whereby the business or the management or control of the business of such corporation is limited, changed or in any manner affected, and the purpose or effect of such union or combination is to limit, control or destroy competition in the manufacture or sale of any article or commodity, or is to limit or control the production of any article or commodity, or is to control or fix the price or market value of the material entering into the production of any article or commodity, or in case the purpose or effect of such union or combination is to control or monopolize in any manner the trade or commerce, or any part thereof, of this state, or of the several states, such union, combination, agreement, arrangement or contract is hereby prohibited and declared to be unlawful.

SEC. 2. Every person who shall either directly or indirectly make any such contract, agreement or arrangement, or enter into any such combination, conspiracy or trust as defined in section one (1) of this act, shall be guilty of a felony and, on conviction thereof, shall be punished by a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5000), or by imprisonment in the state's prison for not less than three (3) years nor more than five (5) years.

SEC. 3. Any corporation heretofore or hereafter created, organized or existing under the laws of this state which shall hereafter either directly or indirectly make any contract, agreement or arrangement, or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, forfeit its charter, rights and franchises, and it shall thereafter be unlawful for such corporation to engage in business, either as a corporation or as a part of any

combination, trust or monopoly, except as to the final disposition of its property under the laws of this state.

Any corporation organized under the laws of any other state, territory or country, which is now located or which may hereafter be located within this state, and engages in the manufacture, production or sale of any article therein which shall either directly or indirectly make any contract, agreement or arrangement or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, be prohibited from doing any further business in this state, except as to the final disposition of its property under the laws of this state.

SEC. 4. Any contract by any person, partnership, association or corporation, whether domestic or foreign, made in conducting business contrary to the provisions of section one (1) of this act, shall not be enforced in any court of this state in favor of such persons, partnership, association or corporation.

SEC. 5. Any person who shall enter into any correspondence, negotiations or agreement in this state, or who shall, being a resident of this state, go into another state, territory or country for the purpose of entering into any negotiations or agreement which tend to the formation of any contract or combination forbidden by this act, shall be guilty of a felony, and be subject to all the penalties of this act.

SEC. 6. That for the purpose of carrying out the provisions of this act, any citizen of this state may, and it is hereby declared to be the duty of the attorney general, to institute, in the name of the state, proceedings in any court of competent jurisdiction against any person, partnership association or corporation who may be guilty of violating any of the provisions of section one (1) of this act, for the purpose of imposing the penalties imposed by this act, or securing the enforcement of section three (3) hereof. *Provided*, that when such proceedings are instituted by any other than the attorney general, the state shall not be in any manner liable for the costs or for any of the expense of such proceedings. And *provided*,

further, that when the attorney general deems it necessary, he is hereby authorized to employ counsel to assist in the prosecution of any action brought under the provisions of this act.

Sec. 7. The word person as used in this act shall be construed to include any corporation or association formed or existing under any law of this state or any other state or country.

Sec. 8. This act shall take effect and be in force from and after its passage.

Approved April 21st, 1899."

(1)

This act is strictly a criminal law. Every act which it forbids is made a crime. Every violation of the act is a felony.

In view of the provisions of sections 2 and 5 it requires the strictest of strict constructions.

So far as the bill in this case is founded on this act, it is a bill by the sovereign to prevent and restrain the commission of felonies, as such.

In the absence of a jurisdiction therefor expressly given by statute, a court of equity has no jurisdiction to prevent or restrain the commission of crimes as such.

It is true that in the bill the State alleges threatened injury to itself as a land-owner and shipper, but the evidence wholly fails to make a case on this ground, as has been already pointed out. The suit therefor cannot be maintained in the absences of express statutory authority.

No statute other than the act itself is produced to show such authority, and the act wholly fails to give it.

Sections 2 and 5 impose penalties of fine and imprisonment for violations of the act. Section 3 im-

poses on corporations violating the act the penalties of Section 2 (fine and imprisonment) and also forfeiture of their charters, and disability to carry on business.

Section 6, and that only, provides for suits to enforce the law. Under this any one may, and the Attorney-General must, " institute, in the name of the State, proceedings in any court of competent jurisdiction against any person, partnership, association or corporation who may be guilty of violating any of the provisions of section one of this act, for the purpose of

" (1) Imposing the penalties imposed by this act " —(that is, a criminal prosecution, for no penalties except fine and imprisonment are imposed for violations of section one).

" (2) Or securing the enforcement of section three hereof "—that is, by the forfeiture of the charter of the offending corporation, and preventing its continuance in business, if a domestic corporation, and prohibition, if a foreign corporation, to do further business in the State.

This suit is not brought for any such relief, nor could any such be given by the Court, and hence the suit cannot be maintained on this act. And the Circuit Court was clearly right in so deciding (119*a*, fol. 474).

(2)

The transactions complained of are not within the Anti-trust Act.

1. The only provisions of that act that can be claimed to apply to them are those at its beginning making illegal " any contract, agreement, arrangement or conspiracy, or any combination in the form of a trust or

otherwise, hereafter entered into which is in restraint of trade or commerce within this State, or in restraint of trade or commerce between any of the people of this State and any of the people of any other State or country."

This is substantially a copy of the Federal Anti-Trust Act. We have so recently and so fully argued, both orally and in briefs, the point that purchases and sales of stocks or other property among competitors, or between competitors and a third person or corporation, though resulting in an extinction of competition, are not in restraint of trade at common law or within the Federal Anti-Trust Act; that any extinction of competition, or any power to suppress competition, that may result is an incident of the single ownership of what was before owned by competitors, and is not caused directly or immediately by the contract, combination or conspiracy, if any, for making the sale; that we do not feel justified in imposing upon the Court a repetition of that argument.

We wish, however, to call attention to the admission by appellant in its brief (quoted, *supra*, p. 17) of what is abundantly proved by the evidence; viz., that the promotors of the Securities Co. never agreed, combined or conspired to transfer, or procured to be transferred to it, or to help it obtain, any Great Northern shares in excess of the 33 millions held by themselves; that is, their conspiracy did not extend to the acquisition by the Securities Co. of the control, or power of control, of any kind, of two competing companies, and so could not possibly be a conspiracy in restraint of commerce.

And on the point that the purchases and sales between the Securities Co. and the shareholders of the

two railway companies were absolute, and that the Securities Co. is the absolute owner of all shares so obtained, and that the company is not a "trust," we refer especially to the company's offer to the shareholders to *buy* their stock, and the form in which the shareholders offered to *sell* their stock (Defts.' Ex. A, pp. 1048–9), to the fact that, of the round sum paid for the Harriman shares $9,000,000 was *in cash*; that the 34 millions of new common stock obtained from the Northern Pacific Co. were paid for in cash. The Securities Co. could hardly be said to hold in trust these shares, bought for cash, and all its shares stood on the same footing as these.

2. The acquisition and holding of railway shares is a matter not within its purview for other reasons.

The act specifies and deals with various sorts of combinations—to limit the supply of commodities, to control or raise the market price of commodities, or to destroy or limit "open and free competition" in either the production, purchase or sale of any commodity or utility."

The objection to the Securities Co.'s holdings of stock is that it suppresses or restrains competition—but competition in transportation. The act specifies in detail just what suppressions of competition it is aimed at, and does not specify competition in transportation. This specific enumeration excludes from the scope of the general words, "in restraint of trade or commerce," combinations where the only restraint is by suppressing or restricting competition. It certainly excludes from the general words those combinations expressly enumerated, and it excludes all other that restrain competition. The mere enumeration would

be enough to exclude the combinations named, and the act itself in terms excludes them, for it denounces any combination "in restraint of trade or commerce, * * * *or* which limits supply or suppresses competition," etc. The act thus classifies the combinations it denounces:

(*a*) Combinations which suppress competition.

(*b*) Combinations which restrain trade or commerce otherwise than by suppressing competition.

And these classes are mutually exclusive of each other. And, by naming what suppressions of competition are forbidden, it excludes all not named.

Again: The first section goes on to define what unions or combinations *of corporations*, and what surrender of franchises or control of its business by one corporation to another, are forbidden, and it forbids all of such specified unions or combinations whose purpose or effect is "to control or monopolize in any manner the trade or commerce or any part thereof, of this state or of several states."

This specific statement of what unions or combinations giving *one corporation* control of another are prohibited, shows that this subject, so far as intended to be dealt with in the act, was intended to be and was dealt with in this *second* half of the section, and that *combinations controlling corporations* were not intended to be included in the general words of the *first* paragraph, "any combination which is in restraint of trade or commerce."

Again: It will be noted that while this section in each of its two paragraphs deals with monopoly and suppression of competition in manufacture, production, purchase and sale of articles, commodities and utilities, it has nothing to say of transportation. This

silence is significant. It means and can only mean that the legislature did not mean to deal in this act, with railways or railway companies.

And there was ample reason for the omission.

The state already has a law covering the whole subject of railways and their operation, with minute and stringent provisions for regulating the business of the companies. And it had a railway commission specially charged with the duty of executing the law, and clothed with ample powers to that end.

And it already had on its statute book the acts before set forth regulating the consolidation of railway companies and the stock ownership in competing lines. One of these acts had been in force 25 years, another nearly 20 years. The last of them was passed at the same session with the Anti-trust Act, was pending at the same time, and was approved by six days earlier.

When passing this last act, the legislature had under consideration the matter of ownership of stock in competiting railway companies and what restrictions should be imposed upon it. And it determined to re-enact in substance the former laws, and to re-enact them in their natural place—in the place in which all prior legislation on the subject had been enacted—viz: in an act relating to railway companies alone. And in this it followed the unbroken practice of legislatures in this state, viz: to keep its railway legislation by itself, and not confused with legislation on other subjects.

This action of the legislature is of itself conclusive that it did not mean to include in the indefinite mass of subjects of the Anti-trust Act the matter of railway stock ownership, as to which it was at the very time legislating in an act confined to railway companies.

In view of all these considerations, of the enumeration in the act of the subjects covered by it, the unbroken course of legislation in dealing with railways and railway companies by themselves and as separate subjects of legislation, the concurrent passage of another act on the subject of railway stock ownership, the legislature, if it had meant to deal with this subject in the Anti-trust Act, to add it to those specifically named, would have done so by specifically naming it, and not have left the matter of regulating the stock ownership and the operation of railway companies to depend on the varying meaning the courts might give to the word "any."

3. In these particulars and grounds for construction, the state anti-trust law is widely different from the federal law.

The federal law contains no enumeration or specification of subjects within its operation—furnishes no ground for applying the maxim *expressio unius est exclusio alterius.*

The federal law was held applicable to railway traffic contracts on the ground, among others, that if it did not apply to railways there was little left for it to operate on. *U. S. vs. Freight Association,* 166 U. S., 290, 313, 326.

The subject-matter (railway traffic contracts, in the first two of the federal cases, and combination of dealers in the third) which the supreme court held embraced within the federal law, was not embraced in any other congressional legislation. Here, the subject of railway consolidation or stock ownership of competing companies has for a generation formed a separate branch of state legislation which has covered

as much of it as the legislature thought necessary to cover, some of that legislation being strictly comtemporaneous with the anti-trust act.

These differences between the federal and the state anti-trust act require the latter to be constructed, in this particular, by rules that were properly held inapplicable to the former.

4. The combination is not within the Ante-trust Act for another reason. It was not formed within the state. The agreement to form the Securities Co. was made in New York. The company was formed in New Jersey. It was not formed to do anything in Minnesota, nor was it required to do anything there. All its stock purchases were made in New York, and the transfers to it were made in New York, where the transfer books of both railway companies have always been kept. (Mr. Clough, 1044–5).

It is elementary that the laws of a state have no extra territorial operation, and they must always be construed as not intended to have any such operation. Above all is this true of its penal laws. This Anti-trust law is a highly penal act, the 5th section absurdly so. The act can be valid only so far as its operation is confined to this state, and so the legislature must have meant to prohibit and declare unlawful combinations formed in this state and those only. But whatever its intention, it has not made and could not make penal or unlawful the acts of the Securities Co. and its promoters done in the states of New York and New Jersey.

> "Our legislature has no extra territorial jurisdiction, and when it forbids, in unqualified terms,

the doing of an act, it must always be understood that the thing is only forbidden in this state" (*Charles vs. People*, 1 N. Y., 180, 184).

Allgeyer vs. Louisiana, 165 U. S., 578.
In re Grice, 79 Fed., 627, 638.
Clarke vs. Richmond Terminal Ry. Co., 62 Fed., 328, 333–4; 10 C. C. A., 387.
McLaughlin vs. Tuck, 99 Fed., 562.
S. C. (in C. C. A.) 115 Fed., 85.
Flash vs. Conn., 109 U. S., 371, 376–7.

It is needless to say that the foregoing, as well as all of this argument on the Anti-Trust Act, is directed to the intention of the legislature in that act, and to the powers it assumed to exercise by that act. Its powers to enact and enforce its Anti-Consolidation Acts is not drawn in question.

The plaintiff's grievance—the gravamen of the bill—is the acquisition and holding, by the Securities Co. of a large majority of the shares of the two railway companies. There is no evidence that the Securities Co. has taken any part in the management of either road. The claim is that such majority holding of itself and necessarily suppresses competition.

The language of the Anti-trust Act had been construed many times before it was adopted in the Minnesota statute, and the legislature adopted the construction as well as the words. *Warner vs. Texas & Pacific Ry. Co.*, 164 U. S., 418, 423; *Willis vs. Eastern Trust Co.*, 169 U. S. 295, 307–8; *Nicollet Nat. Bank vs. Minneapolis City Bank*, 38 Minn. 85.

The uniform construction by this court has been that "restraint" means "direct restraint," and a "contract or combination in restraint of commerce" means those and those only "whose direct and immediate effect is a restraint upon interstate commerce." *U. S.*

vs. Freight Ass'n., 166 U. S. 291, 313, 341-2; *Joint Traffic Ass'n. vs. U. S.*, 171 U. S. 505, 568; *Hopkins vs. U. S.*, 171 U. S. 578, 592.

This act is therefore limited by its terms to combinations whose "direct, immediate and necessary effect" is to restrain domestic or interstate commerce or both.

6. The defendants insist that the purchase and holding of shares in a railway company, whether a majority or less, does not *directly* affect interstate commerce, and a contract or combination for such purchase and holding does not *directly* affect the commerce of the railway.

The commerce of the company is not carried on by the shareholders, but by the directors. The directors do not derive their powers from the shareholders, but from the charter of the company. They hold for fixed terms. During their terms they are independent of the shareholders, are beyond their control, and cannot be removed by the shareholders even for cause, though the courts on application of the company or shareholders may remove them for cause. And so the stockholders do not control the directors or the commerce of the company. They may have great influence over the directors, but influence is not control. And whatever influence they may have in matters concerning the ordinary and lawful traffic and business of the company, there is no presumption and no ground for holding that any control of the stockholders over the directors extends to compelling or even inducing them to risk fine and imprisonment by violating the anti-trust act, whether by suppressing competition or in any other way.

Our position that the shareholders do not directly

control the directors or the commerce of the road is that of this Court as stated by Chief Justice WAITE in *Pullman Car Co. vs. Missouri Pacific Ry. Co.*, 115 U. S. 587, 596-7; *Porter vs. Pittsburg Bessemer Steel Co.*, 120 U. S. 649, 670, and of *Hoyt vs. Thompson*, 19 N. Y. 207, 216 per COMSTOCK, J.; *Burrill vs. Nahant Bank*, 2 Met. 163, per SHAW, C. J.; *Nat. Bank of Commerce vs. Allen*, 90 Fed. 545; 33 C. C. A. 169 per THAYER, J.

And as the Securities Co. owning a majority of shares of one only of these roads would not directly control its commerce, so it does not control the commerce of both by owning a majority of shares of each. Each railway company has and is required by law to have a board of directors wholly independent of the other. To operate the roads in violation of law by suppression of competition between them or other forbidden practice or agreement requires the concurrent action of two boards of directors to violate the law, and such action is even less under the control of the Securities Co. than would be the action of a single board of directors of one company only.

If we are right in following this court and maintaining that the Securities Co. *does not*, by reason of its stock ownership, *directly control* the commerce of the two railway companies, then such ownership and any combination that may have produced it are not within the anti-trust law, since that is limited to combinations, etc., which act *directly* on commerce.

7. The state legislature is powerless to defeat the right of the Northern Pacific shareholders to sell to the Securities Co. or the right of that company to purchase, for this additional and conclusive reason.

Just as the power to regulate stockholding in the

Great Northern Co. is exclusive in Minnesota, so the power to regulate stockholding in the Northern Pacific Co. is exclusive to its creator, the State of Wisconsin, and for the same reason. The State of Minnesota has no more concern with stockholding in Wisconsin corporation—either to authorize or to forbid—than it has with stockholding in a National bank or in the bank of England. Nothing can be more baseless than a claim by Minnesota to provide by statute who shall and who shall not hold stock in a corporation chartered by Wisconsin.

The bill, however, alleges (par. III.) that by reason of a Minnesota statute, providing for the filing of their articles by foreign railway companies, and its acceptance by the Northern Pacific Co. that company became a domestic corporation in Minnesota, and subject to all its laws and regulations relating to railway companies, and especially to the anti-trust and anti-consolidation laws of that state.

The statute relied on (Gen. St. 1894, c. 34, §§ 2753–4) provides in the first section that a railway company of another state may extend its railway into and operate it within the state, and "shall have all the powers, franchises, immunities and privileges and be subject to the same liabilities as railroad companies organized under the general laws of this state," with the provisos that any company availing itself of the Act shall be subject to payment of a gross-earnings tax to be computed as therein provided, and shall also file a copy of its articles.

The next section (§ 2754) provides that on filing of such articles, "which shall be deemed to be an acceptance of the benefits of this act, the said corporation is hereby declared to be a legal domestic corporation of this State."

It is contended by appellant that under this statute the Northern Pacific Company having filed its articles, has become a Minnesota corporation to the extent that its constitution, composition and internal organization are no longer within the exclusive control of Wisconsin, but may be regulated by Minnesota, and have been regulated by Minnesota laws here in question.

But this position is untenable, for

1. The sections in question are concerned only with the business of the company and its taxation in that state. On any other construction, all the various provisions of the charter governing the constitution and internal management of the corporation, including the amount of its stock, by whom to be held or not to be held, how to be transferred, would be varied by the different and probably conflicting legislation of all the states between Wisconsin and Puget Sound.

2. The State of Wisconsin cannot be shorn of its exclusive power over a corporation of its own creation by any agreement or transaction between the corporation and any third person, whether an individual or a State of the Union. Any agreement by the company to vest in Minnesota any part of the power already vested in Wisconsin must necessarily be *ultra vires* and utterly void.

That no state has power over the organization and internal government of a corporation, though doing business within its territory, yet created by the laws of another state, is held in

Miles vs. Woodward, 115 Cal., 308; 46 Pac. Rep. 1076.

Williams vs. Gaylord (C. C. A.) 102 Fed. 372, 375-6; s. c., 186 U. S. 157, 165.

For this reason, in addition to that given, *supra*—viz., that the Securities Co., having lawfully bought a majority of Northern Pacific stock before buying any Great Northern stock had a right to buy and has the right to hold all the Northern Pacific stock it has acquired—any decree against defendants must be confined to its holding of Great Northern stock.

But the appellant has failed to show anything unlawful in the acquisition or holding of either stock, and so the decree should be affirmed.

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JAMES H. McK

Supreme Court of the United States.

OCTOBER TERM, 1903. No. 433.

STATE OF MINNESOTA,
Appellant,

vs.

NORTHERN SECURITIES COMPANY, et al.,
Appellees.

BRIEF ON QUESTION OF REMOVAL.

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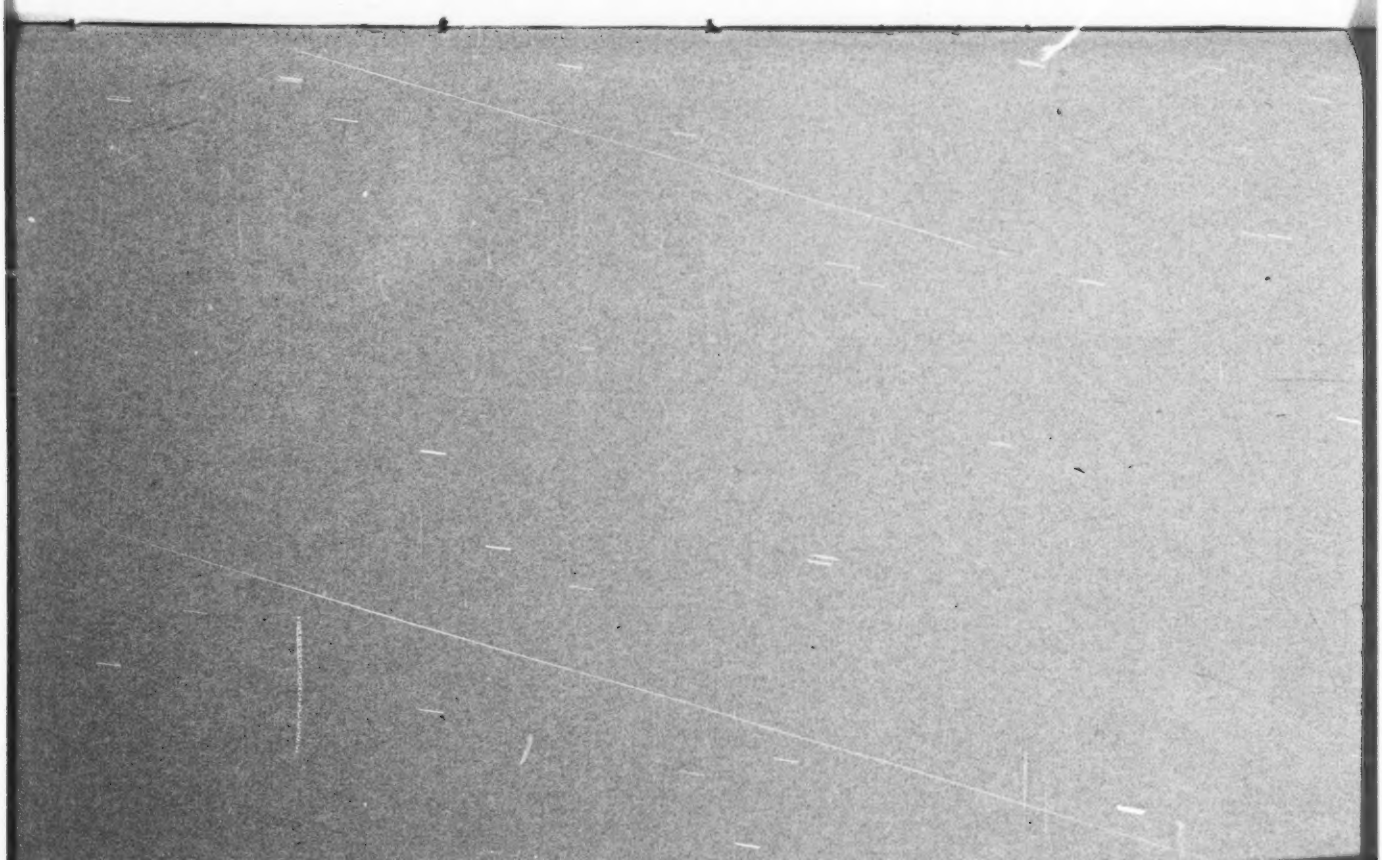

Supreme Court of the United States.

OCTOBER TERM, 1903. No. 433.

STATE OF MINNESOTA,

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Appellees.

BRIEF OF APPELLEES ON QUESTION OF REMOVAL TO CIRCUIT COURT.

THE CAUSE WAS PROPERLY REMOVED TO THE CIRCUIT COURT, AND UPON SUCH REMOVAL THAT COURT ACQUIRED JURISDICTION OF IT AS A "SUIT ARISING UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES."

FIRST.

The test of a "Suit arising under the Constitution or laws of the United States."

(1)

Three quarters of a century ago, in a case twice argued, the criterion of a suit arising under the Con-

stitution or laws of the United States was stated as follows by Chief Justice Marshall:

> "A cause may depend upon several questions of fact and law. Some of these may depend on the construction of a law of the United States, others on principles unconnected with that law. If it be a sufficient foundation for jurisdiction that the title or right set up by the party may be defeated by one construction of the Constitution or laws of the United States and sustained by the opposite construction provided the facts necessary to support the action be made out then all the other questions must be decided as incidental to this which gives that jurisdiction. Under this construction, the judicial power of the United States extends effectively and beneficially to that most important class of cases which depend on the character of the cause."
>
> Osborn v. Bank of United States, 9 Wheat. 738, 822.

This criterion of a suit arising under the Constitution or laws of the United States is the same that had already been stated by the Chief Justice and applied by the Court in a case brought into this Court on writ of error to the Supreme Court of a State.

> "A case in law or equity consists of the right of one party as well as of the other, and may truly be said to arise under the Constitution or a law of the United States whenever its correct decision depends on the construction of either."
>
> Cohens v. Virginia, 6 Wheat. 264, 379.

This test, so long ago established, has ever since been recognized and followed, in whatever aspect

and at whatever stage a suit may be brought to a federal court.

It has been quoted in nearly all, and has been the ground of decision in all, of the cases involving the question, whether suits by original process or removed suits.

Among the principal of these cases are:

Gold-Washing Co. v. Keyes, 96 U. S. 199, 201, per Waite, C. J.

Tennessee v. Davis, 100 U. S., 257, 264, per Strong, J.

Railroad Co. v. Mississippi, 102 U. S. 135, 140-1, Per Harlan, J.

Ames v. Kansas, 111 U. S. 449, 462, per Waite, C. J.

Kansas Pacific v. Atchison, R. R., 112 U. S. 414, 415-6, per Field, J. (An original suit).

Pacific Railroad Removal Cases, 115 U. S. 1, per Bradley, J.

Starin v. New York, 115 U. S. 248, 257, per Waite, C. J.

Southern Pacific R. Co. v. California, 118 U. S. 109, 112, per Waite, C. J.

Metcalf v. Watertown, 128 U. S. 586, 588-9, per Harlan, J. (An original suit and an opinion often quoted.)

Shreveport v. Cole, 129 U. S. 36, 41, 43, per Fuller, C. J. (An original suit.)

Beck v. Perkins, 139 U. S. 628, 630, per Harlan, J.

(3)

The foregoing cases were decided under the act of 1875.

In the act of 1887-8, Congress, using the same terms as in the act of 1875, did not mean to use them in any different sense from that already given to them by this Court. On the contrary it re-enacted them as thus construed.

And this Court has never intimated that the criterion declared by Chief Justice Marshall and adopted and applied by itself in so many cases was erroneous in itself or had been rendered inapplicable to any class of cases by the amending act of 1887-8.

The following cases originated after the latter act:

Cooke v. Avery, 147 U. S. 375, 384, per Fuller, C. J. (An original suit.)

Colorado Central Mining Co. v. Turck, 150 U. S. 138, 143, per Fuller, C. J. (An original suit.)

Blackburn v. Portland Gold Mining Co., 175 U. S. 571, 580-1, per Shiras, J. (An original suit.)

Patton v. Brady, 184 U. S. 608, 611, per Brewer, J. (An original suit.)

Swafford v. Templeton, 185 U. S. 487, 494, per White, J.

Northern Pacific Ry. Co. v. Soderberg, 188 U. S. 526, 528, per Brown, J. (An original suit.)

It will be noted that in these cases decided under

the act of 1887-8, the Court not only adopts the same criterion that was applied under the act of 1875, but relies on the cases decided under that act as authority for so doing, and quotes largely from the opinions in those cases.

(4)

It is perfectly true that some removals that were authorized by the act of 1875 are not authorized by the act of 1887-8.

The reason is not any change in the criterion of a suit arising under the Constitution or laws of the United States, but simply a difference in the cases to which the criterion is applied.

Whether a circuit court has jurisdiction of a suit arising under the Constitution or laws of the United States, depends upon the questions raised on the record at the time the suit is brought into the court for its cognizance. This is in accordance with the general rule as to jurisdiction of subject matter.

Under the earlier act the declaration or bill and the answer or petition for removal might form the record presented to the circuit court. Hence cases might on this record present a federal question and so be removable though no such question was presented by the bill or declaration. And so a suit might be removable by plaintiff before answer, his pleading showing a federal question, but would not be removable after an answer admitting plaintiff's entire cause of action, but pleading a release or other matter of avoidance so that the record on removal would no longer present a federal question.

The principle—the *ratio decidendi*—is the same in original and in removed cases, and whether under the act of 1875 or that of 1887-8. The criterion of jurisdiction—the appearance of a federal question on the face of the record—is the same. The only difference is in the records to which the test is applied. Whatever would present a federal question if appearing in a bill and answer in a cause removed after answer under the act of 1875, must equally present a federal question if properly appearing in the bill in an original suit or in a suit removed under the act of 1887-8. By "properly appearing" we mean such as might properly appear in the statement of plaintiff's own case. See instances, *infra*.

The act of 1887-8 allows the removal of those suits only which might be originally brought in the circuit court. For this reason, and because on removal (which must be made before answer) the declaration or bill is the only pleading on which the circuit court is asked to take cognizance of the case, it necessarily follows that the plaintiff's pleading in a removed, as much as in an original suit must show that the case arises under the Constitution or laws of the United States.

And as it is the proper function of the plaintiff's pleading to state his own case and not that of the defendant, it is settled by the cases already cited that to give jurisdiction the federal question must appear in plaintiff's statement of his own case, or of his own claim, and that this is all that is required.

In one or two cases there are expressions—inadvertent, no doubt—to the effect that the plaintiff's

declaration must show that he asserts a right under the Constitution or some law of the United States,—as if only such suits were suits arising under the U. S. Constitution or laws. But this is directly opposed to the cases already cited and others that will be cited.

If such a requirement were essential to jurisdiction, one whose property was wrongfully seized by a United States marshal or revenue collector, or whose property was taken or his person or property injured by a federal railway corporation, could have no redress in the federal courts. His right of property or of personal security is not derived from the United States Constitution or laws, and when he asserts either in a declaration he is not asserting a right under the United States Constitution or laws.

For trespass against a marshal, see

Bock v. Perkins, 139 U. S. 628.

Sonnentheil v. Brewing Co., 172 U. S. 401.

And compare

Walker v Collins, 167 U. S. 57.

Against an internal revenue collector, see

Venable v. Richards, 105 U. S. 636.

Harding v. Woodcock, 137 U. S. 43.

[And these are all instances where the same federal question might be raised by justification in the answer or by the same matter stated—and properly stated—in the declaration, as suggested above.]

And the books are full of cases against collectors of customs, and actions of tort against federal railway companies, brought in the circuit courts.

In *Tennessee* v. *Davis*, 100 U. S. 257, (a removed case, already cited) Mr. Justice Strong says, (p. 264):

> "What constitutes a case thus arising was early defined in the case cited from 6 Wheaton. It is not merely one where a party comes into court to demand something conferred on him by the Constitution or by a law or a treaty."

And he goes on to quote from Osborn v. Bank of U. S. and Cohens v. Virginia.

In *Osborn* v. *Bank of United States*, the suit was brought by the bank to enjoin collection of a tax, the bank asserting its rights under its charter. If suits asserting rights claimed to have been conferred on the plaintiff by the federal Constitution or laws were the *only* suits arising under the Constitution and laws, the Chief Justice could not have failed to limit his description accordingly.

On the contrary, he adopted the broader description, so often repeated by this Court of cases arising under the Constitution and laws, and expressly includes the bank's case *within* it, saying: "the case of the bank is, we think, a very strong case *of this description*." (9 Wheat. 823.)

That is, a case of rights claimed under act of Congress, if within the jurisdiction, is so when and because it presents a federal question.

And in *Swafford* v. *Templeton*, 185 U. S. 487, 494, Mr. Justice White distinguishes between two sorts of cases equally within the jurisdiction of the circuit courts, viz: (1) "Controversies concerning rights which are created by the Constitution or laws

of the United States, and which consequently are in their essence federal," and (2) "Controversies concerning rights not conferred by the Constitution or laws of the United States, the contention respecting which may or may not involve a federal question, depending on what is the real issue to be decided or the substantiality of the averments as to the existence of the rights which it is claimed are federal in character."

This is conclusive as to the jurisdiction over the second as over the first class of cases.

And the existence of a federal question has been considered more important than a right asserted under an act of Congress, and such assertion of right held insufficient when the case did not involve a substantial controversy as to the construction or effect of the Constitution or laws of the United States—that is a substantial federal question.

Western Union Tel. Co. v. Ann Arbor R. Co.,
178 U. S. 239, 243-4

SECOND.

This suit arises under the Constitution and laws of the United States because of the federal questions presented by the bill.

(1) Upon the State statutes, whether, in their application to the facts alleged in the bill, they regulate interstate commerce, and, if so, whether the regulation is such as the State is authorized to make by the Federal Constitution.

(2) Upon the State's assertion of right and claim of relief under the Federal Constitution and laws, especially the Federal Anti trust Act.

(3) Upon the State's assertion of right and claim of relief under the Swamp-land granting acts of Congress.

I.

The Averments of the Bill which present the federal questions.

In paragraphs II, III and IV (8a-17a) the bill describes the lines of the two defendant railway companies on which they carry on interstate commerce in competition between St. Paul and Puget Sound.

In paragraph X, (22a-24a) the bill sets forth two laws of the State, forbidding a railway to consolidate with, or own the stock of, or control, a parallel or competing line; and also an act prohibiting and declaring unlawful, and making criminal all contracts, combinations, etc., in restraint of domestic or interstate trade or commerce.

In paragraph XI (25a) it charges a conspiracy to form the Securities Co. solely as an instrumentality by which the stock, property and franchises of the two railways should be consolidated in fact, and the fixing of rates "over any and all the lines of railway of each of said companies, as well within as without the State of Minnesota, should be vested in and controlled by said Securities Co., and all compe-

tition in freight and passenger traffic between said two systems, as well within as without the State of Minnesota, be suppressed"—all with the intention to evade and violate the State anti-consolidation laws, and the statute "prohibiting all combinations in restraint of trade or commerce within this State, and restraint of trade and commerce between the people of this State and the people of other states and countries."

Paragraphs XII—XIV (26a-32a) detail the acts done in carrying out the conspiracy.

Paragraph XV (32a-35a) states that the Securities Co. has acquired a great majority of the stock of each railway company, which was transferred to it by the conspirators named and their associates, with "the sole purpose, object and effect * * * to transfer to and vest in said Securities Co. the complete management and control of the respective lines of railway and railway properties of each of said railway companies within and without the State of Minnesota, and to place the complete management and control of the same and the power to dictate the policy of each of said companies, as well as the power and authority to fix rates and charges for the transportation of both freight and passengers within the State of Minnesota as well as without said State, in the hands of and under the control of one party or board of directors."

Paragraph XVIII (36a) states that the scheme for consolidation and control has been consummated, and

"Said two railway systems are now under the

absolute management and control of the defendant the Northern Securities Co., its directors and officers, and by reason thereof all competition between said lines has been destroyed, and a monopoly in railway traffic in Minnesota as well as without said state has been created, to the great and permanent and irreparable damage of the State of Minnesota and the people thereof and in violation of its laws and of the laws of the United States in such case made and provided, viz.: The act of Congress approved July 2, 1890, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies.'"

The relief asked is

1. That the acts complained of be decreed to be "in violation of the laws of this State and of the United States."

2. That the Securities Co. be enjoined from acquiring, holding, voting or in any way acting as owner of any shares of either railway company, or controlling in any way their management or operations.

3. That the Northern Pacific Co. be enjoined from recognizing the Securities Co. as a shareholder or paying it any dividends, or from making any combination with the Great Northern Co. that will in any way disturb its independent integrity, management and control, and "from entering into any agreements directly or indirectly destroying free and unlimited competition between said defendant and said Great Northern Co. by interchange of traffic, poolings of earnings, or division of profits or otherwise."

4 and 5. That a like injunction be decreed against the Great Northern Co.

6. For injunction against Mr. Hill.

7. The general prayer for other and further relief.

The bill also contains the following averments of the injury done to plaintiff as a property owner and shipper by the matters complained of, for, like the United States in the *Debs Case*, (158 U. S. 564, 583-4) the plaintiff sues in those capacities as well as a sovereign.

In paragraph V (18a) it alleges the plaintiff's ownership of 3 million acres of swamp lands worth $15,000,000, located in the territory traversed by the lines of defendants' railways, and the value and salability of which depend on open and unrestricted competition between the defendant railway companies; that under the consolidation and unity of control hereinafter set forth there will be an end of the rivalry heretofore existing between the companies, and a cessation of the building of spur lines to or near such lands, which lines are necessary to their salability and have heretofore, by reason of the rivalry of said corporations, been built; and that because of such cessation many of such lands will not be reached by railroads for many years to come.

In paragraph VI (19a) it alleges that the plaintiff owns and maintains a university, five normal schools, and a large number of hospitals for the insane, schools for the deaf, dumb, blind and feeble

minded, etc., and proceeds:

> "That for many years past the State of Minnesota has continuously maintained and supported each of said institutions, and in the care, maintenance and management thereof has been compelled to, and in the future of necessity, will annually purchase large quantities of supplies for said institutions, including provisions, clothing and fuel, a great portion of which the State of Minnesota is compelled to ship over the different lines of railway owned and operated by the Northern Pacific Co. and the Great Northern Co."

Shipments over "the different lines of railway" of the two companies, include interstate as well as wholly domestic shipments, the bill not distinguishing between the two.

It is to the State's interest as a property-owner and shipper that must be referred the averment in paragraph XVIII, quoted *supra*, that the alleged "monopoly in railway traffic in Minnesota as well as without said state" (i. e. interstate traffic) "has been created, to the great and irreparable damage of the State of Minnesota, * * * in violation of * * * the Act of Congress, approved July 2, 1890."

That these paragraphs V and VI (and especially the latter) were inserted to sustain a claim by the State as land-owner and shipper under the Anti-trust Act of Congress, is evident on their face, and that such was the purpose of the pleader is evident from this:

In the original bill attempted to be filed by the State in this Court two years ago, paragraphs V and

VI of the present bill appear as paragraphs III. A and B.

In the Brief of the State in support of its motion for leave to file that bill, it is said (page 6):

> "The proprietary interest under which the State of Minnesota claims the right to maintain this action is set forth in said bill of complaint in paragraphs III and IV."

And see further on pages 6 and 7.

And at the top of page 6 of the same brief, after a statement of what is charged in the bill, is a manuscript insertion, apparently in the handwriting of the Attorney General, of the following claim, being the same made in print in paragraph XVIII of the present bill: "It is also claimed this is a violation of the Federal Anti-trust Act."

II.

The bill presents federal questions both in its aspect of a bill by the State as a sovereign to enforce its local statutes, and as a landowner and shipper for relief under those statutes. And these questions are the same whether the State sues as sovereign or as property-owner and shipper or in both of these capacities.

It appears by the bill that each of the defendant railways traverses several states, and carries on interstate as well as domestic commerce, and competes with the other for both classes of commerce.

It also appears that the Securities Co. has bought a large majority of the stock of both companies.

It is also alleged that such purchase places the control of both companies in the Securities Co., and *ipso facto* restrains both their state and interstate commerce by suppressing all competition between them, and creates a monopoly of both kinds of commerce.

The State assails this as a violation of its anti-consolidation laws and its law forbidding combinations in restraint of interstate as well as domestic commerce.

It is evident that if this stock-purchase and holding restrains commerce at all, it restrains both state and interstate commerce. And that any state law regulating it regulates both kinds of commerce if it regulates either.

And so the questions are:

1. Is the matter of stock holding in competing railway companies engaged in interstate commerce, in itself a matter of interstate commerce?

2. If it be a matter of interstate commerce, is it a matter for exclusive regulation by Congress, or may the State regulate it in the absence of regulation by Congress?

3. If it be a matter of interstate commerce, but one which the State may regulate until action by Congress, has Congress regulated it by the Anti-trust Act of July 2, 1890?

These questions are certainly presented by the bill, and as certainly they are federal questions. They involve the construction of the Constitution and laws of the United States, and will receive a different answer and the cause a different decision according to the construction given to the Constitution and laws.

The questions stated above show that the bill is not open to an objection that has been made in one case, at least, that the plaintiff claims *against* the Constitution. On the contrary, on one construction of the commerce clause, the state statutes are in accord with the Constitution, and plaintiff is not required to and presumably will not contend for the opposite construction.

In nearly every case where a plaintiff asserts a right as founded on the Constitution or a law, his

claim, while under them on one construction, is against them on an opposite or different construction, yet his suit is none the less a suit arising under the Constitution and laws.

If, then, we are right as to what constitutes a suit arising under the Constitution and laws of the United States,—if what has over and over again been declared to be law from Osborn v. Bank of U. S., in 1824, to Patton v. Brady and Swafford v. Templeton, in 1902, is still the law,—the bill of the plaintiff, presenting as it does federal questions, would be sufficient as an original bill, the basis of a suit begun by original process, in the circuit court. The jurisdiction would attach on the filing of the bill, and would not require or be helped by an answer or demurrer relying on the unconstitutionality of the state laws. That would add no new fact to those stated in the bill, and jurisdiction depends on the facts alleged.

The bill, being sufficient to show jurisdiction in a suit brought originally in the circuit court, must necessarily be sufficient to show jurisdiction in a removed suit.

The following cases are closely analogous to, and some of them on all fours with, the present.

State of South Carolina v. Coosaw Mining Co., (1891) 45 Fed. 804, was brought in a State court. The complaint simply alleged the State's ownership of the bed of the Coosaw river and the phosphate deposits there, and that the defendant claimed an exclusive right of mining

there, which plaintiff denies; but that notwithstanding such a denial the defendant obstructs the relators, who are the state board of phosphate commissioners (p. 805); that defendants' claim is based on a specified act of the State legislature, which the relators say is invalid (p. 806); that the defendant has brought suit against the State's licensees and threatens others, and this cloud on the State's title should be removed (p. 805).

The defendant removed the case to the circuit court as arising under the U. S. Constitution, the statute under which the relators were acting being alleged to be in derogation of defendant's grant.

On motion to remand the court considers the case under two aspects: (1) on the complaint alone, (2) on the complaint and petition for removal. On each aspect the court holds that the suit arises under the Constitution.

To arrive at this conclusion on the complaint alone, the court takes judicial notice of two public laws of the State, one making a grant claimed to be exclusive to defendant, the other the act of 1890, (pleaded by its title in the bill), under which the suit is brought, and which is in derogation of the rights granted by the former.

Reading these statutes into the complaint, the court holds that it presents a federal question under the contract clause of the Constitution, and that the suit is removable. On a second application the decision of Judge Simonton was affirmed by Chief Justice Fuller (47 Fed. 225) whose final decree was affirmed in 144 U. S. 550, this Court, in its state-

ment of the case, referring to the proceedings in 45 and 47 Fed., where the jurisdictional question was raised and determined. In view of the scrutiny always—particularly since the amendment of 1887-8—given by this Court to the record to discover flaws in the jurisdiction especially in cases removed on this ground, this affirmance amounts to a direct decision in favor of the jurisdiction.

In this case, thus affirmed, Simonton, J., says. (45 Fed. 809):

> "Thus there are present before the court with this complaint two acts of the legislature of South Carolina. One of them, say the defendants, creates a contract between them and the state, giving them certain exclusive rights in state territory. The other creates the board which the relators claim to be; by its several provisions seeks to clothe them with powers impairing these contract rights of defendants; and by its general repealing clause seeks to destroy them altogether. Thus there is made in this way, going no farther than the complaint and the acts which in contemplation of law accompany and illustrate it, an issue which raises a federal question, and would be proper for the jurisdiction of this court."

This case is cited with approval in Re Debs, 158 U. S. 564.

Whether the court was right in thus importing into the complaint a State statute not pleaded (and the affirmance would indicate that this Court considered that it was), does not affect the applicability or the authority of the case on the question now under discussion. Here the statutes are set forth at large.

In *Ames v. Kansas*, (1884) 111 U. S. 449, the State brought *quo warranto* in one of its own courts, against one of its own railway companies, the Kansas Pacific Co., and a like proceeding against its stockholders, alleging that the company had unlawfully and in violation of its charter attempted to consolidate with the Union Pacific R. Co., a pretended corporation, created, if at all, by act of Congress, (describing its route), owing no duty to Kansas and amenable only to federal control. The petition set forth the Kansas acts of 1855 and 1857 forming the company's charter, its organizaton thereunder, and the Pacific railroad acts of Congress of July 1, 1862, and July 2, 1864 (p. 453), section 16 of the former act (p. 450) being that under which the consolidation was made. It also set forth a copy of the articles, from which it appeared that the sole and only authority relied on for the consolidation was that contained in those acts of Congress (p. 454).

Other charges were made, among them that the roads were competing lines and did not connect at the state line, so as to form a continuous line of railway. And all these were relied on as grounds for forfeiture of the company's charter.

The defendants, in their answers, set up and relied on the same acts of Congress stated in the bill, and then filed their petitions for removal to the circuit court, by which the case was on motion remanded.

The cases were held properly removed, because "the whole purpose of the suits was to test the validity of the consolidation. The charge is of an unlawful and wrongful consolidation, and from the begin-

ing to the end of the petition against the Kansas Pacific Co. there is not an allegation of default that does not grow out of this single act" (p. 462). * * * "That the validity of the consolidation, so far as the State is concerned, rests alone on the authority conferred for that purpose by the acts of Congress, is not denied. If the acts of Congress confer the authority, the consolidation is valid, if not, it is invalid. Clearly, therefore, the cases arise under these acts of Congress."

The Court then proceeds to consider whether a suit of this kind between a State and one of its own corporations can be removed to the circuit court when it presents a federal question, and the decision is that it can.

It will be noted that the case was removed after answer, but it will be noted that the answer merely set up the acts of Congress already pleaded in the bill, and presented no new federal questions. In this respect the case is not unlike *Harding v. Woodcock*, 137 U. S. 43, cited *supra*, and suits against U. S. marshals as such, where the same matter may be averred in the declaration and thus show jurisdiction, and also averred in the answer as part of the defence.

Hence if the bill and answer together showed a federal question (and the Court held that it did, and that the case was removable on that ground) the bill of itself showed the same question and so would have sustained an original suit in the circuit court.

It will also be noted that the State *claimed nothing under any act of Congress, but the contrary.*

Also that this was a controversy between the State and one of its own corporations, based on its own anti-consolidation law. And see *Southern Pacific R. Co. v. California*, 118 U. S. 109. 111-3, and cases cited.

In *State of South Carolina v. Port Royal &c. Ry. Co.*, (1893) 56 Fed. 333, the State filed a bill in its own court against defendant, (a corporation of its own creation), alleging that a majority of defendant's shares had been acquired by the Central R. Co. of Georgia, which had no power under the laws of that State to hold such shares, and which acquisition was also in violation of the laws of South Carolina, the lines of the two companies being parallel and competing, and was made to cripple the traffic of defendant and create a monopoly.

The bill states at length the lines which the Georgia Company operates, as to which the court says (p. 335): "It may be noted, by the way, that this means largely engaged in interstate commerce," (and see p. 337 at top), so that the bill shows on its face that it was brought to defeat a purchase and holding of stock in a competing line by a company engaged in interstate commerce.

That is, the bill asserts a right by the State to prevent such stockholding though the holder is engaged in interstate commerce, and, of course, that the right of the state to prohibit such purchase does not conflict with the commerce clause of the Constitution or any valid legislation of Congress thereunder.

The defendant's petition for removal asserts the

right of the buyer to purchase and hold the stock under the commerce clause and the interstate-commerce law, free from interference by the State. Under the cases cited and referred to *supra* in our observations on Ames v. Kansas, this statement of the petition would seem to add nothing to the case for jurisdiction made by the bill. It presents the same federal question already presented by the bill.

The Court (Simonton, J.) held the case properly removed because of the federal question under the commerce clause of the Constitution.

This case is quite analogous to the present, although here the complaint in this case presents the federal question yet more clearly and distinctly.

People v Rock Island &c. Ry. Co., 71 Fed. 753, was a petition in a State court of Illinois to compel the railway company to run its passenger trains to its original (but abandoned) station in Rock Island, the relator claiming such to be the requirement of a general statute of Illinois. The prayer was not limited to trains running wholly within the state. Defendant's petition for removal showed that the company was engaged in interstate commerce, running trains through Rock Island into Iowa, and that the requirement creates a serious burden on interstate commerce. In denying a motion to remand, Grosscup, J., said:

> P. 755. "On the motion to remand my sole duty is to ascertain if any such defense can probably and fairly be interposed."
>
> P. 757. "I have already said enough to show that in my judgment it is at least a subject of

> fair dispute whether the attempted regulation be not a burden on interstate commerce. That conclusion settles the fate of the motion under consideration. When such a question fairly arises, either in the right invoked by the plaintiff or the defence interposed by the defendant, there exists a case arising under the Constitution and laws of the United States which either party has a right to bring into the federal court."

The court doubtless erred in considering the petition for removal. But if the relator's petition had stated that the railway company's trains which he desired to have stop at the old Rock Island station included interstate trains, the same federal question would have been presented which was presented by the complaint and petition.

In the present case the complaint itself contains all the elements of a federal question which in the case just stated were contained a part in the plaintiff's pleading and a part in defendant's petition.

In *State of Minnesota v. Duluth & Iron Range R. Co.*, (1898) 87 Fed. 497, the plaintiff sued in one of its own courts alleging various acts of its legislature granting swamp lands to defendant to aid in building its railway; the construction and completion of the railway, and conveyance to the company by the governor of a large amount of lands selected under the grant; various dispositions made of such lands by the company by sale or mortgage; and also an act of the legislature of April 21, 1897, purporting to repeal all prior acts granting lands to defendant, and to forfeit and resume all the lands so granted.

The defendant removed the cause to the circuit court, where a motion to remand was denied by Lochren, J., on grounds thus stated:

> "It appears to be settled that, to sustain the jurisdiction of this court, it must appear by the plaintiff's statement of the facts on which his claims depend, that the suit is one arising under the constitution or laws of the United States. The case of Tennessee v. Union & Planters' Bank, 152 U. S. 454, has been followed upon this point. In that case (at page 460) the decision in Starin v. City of New York, 115 U. S. 248, approved in Carson v. Dunham, 121 U. S. 427, that 'the suit must be one in which some title, right, privilege, or immunity on which the recovery depends will be defeated by one construction of the Constitution or a law or treaty of the United States, or sustained by a contrary construction,' was referred to as equally applicable to the act of March 3 1887, as amended by the act of August 13, 1888, as to the prior act of 1875. In other words, to give the United States circuit court jurisdiction, it is not necessary that it should appear that plaintiff's right to recover is based upon and supported by some provision of the Constitution or statutes of the United States. A federal question is equally presented if it appears from plaintiff's statement of facts that a construction, which may be fairly claimed and contended for, of a provision of such Constitution or statutes, would defeat plaintiff's right of recovery. The complainant's right of recovery here depends upon the validity of the legislative act of April 21, 1897, when tested by the provisions of section 10 of article 1 of the Constitution of the United States, and section 1 of article 14 of the amendments to that Constitution. Every fact upon which the solution of this federal question depends is stated on the face of the complaint, and apparently the question can be

presented by a demurrer to the bill of complaint. The motion to remand is denied."

The case of *Tennessee v. Union Bank*, 152 U. S. 454, has been by some supposed to overrule the construction of the Constitution on which we rely, and to decide that a suit does not arise under the Constitution or laws, although it presents a federal question on which its determination depends; but that a suit so arises only when the plaintiff asserts a right under the Constitution or laws of the United States, and such assertion is shown by his declaration or bill.

It is settled that a plaintiff bringing an original suit, must show "at the outset" (and hence in his bill or declaration) that the circuit court has jurisdiction—that is, must show that the suit arises under the Constitution or laws. And he must show this by the statement of his own "claim"—that is, his own case or cause of action. He cannot make a case for jurisdiction by alleging matters purely of defence.

In *Tennessee v. Union Bank*, the original suits, two in number, were brought to enforce payment of taxes under a general law.

In each suit the plaintiff's "claim" consisted (1) of its right, arising from the imposition of taxes by the statute, the assessment and levy of such taxes, and demand of payment after due, if required by the statute, and (2) of the violation of its right by the refusal or neglect of defendant to pay.

The violation of a plaintiff's right is as much a

part of his "claim" or cause of action as the right itself.

It is plain that the statement of such a claim as that of the State raised no federal question; and it is also plain that the averments as to defendant's claim had no place in the bill and could not be considered on the question of jurisdiction. The decision was necessarily against the jurisdiction.

But after quoting from *Carson v. Dunham*, 121 U. S. 421, 427, and from *Metcalf v. Watertown*, language declaring that the test of a suit arising under the Constitution and laws is that for which we contend, the presentation of a federal question—(Mr. Justice Harlan in the latter case speaks of an original suit being properly brought in the Circuit court "upon the *sole* ground that the determination of the suit depends on some question of a federal nature.") —Mr. Justice Gray says:

> "It is *therefore* essential to jurisdiction that the plaintiff's declaration or bill should show that he *asserts a right* under the Constitution or laws of the United States."

If these words are to be taken literally, Mr. Justice Gray, while professing to follow the decisions which he quotes and to deduce this ruling from the quoted passages, directly overrules them—and not only overrules them, but overrules a long line of decisions by which the overruled construction seemed as firmly established as if written in the Constitution itself—and all this by a direct deduction, without any intermediate reasoning, from the very de-

cisions quoted, which are thus, in the same sentence, followed and overruled.

We are not prepared to believe that Mr. Justice Gray had any such purpose, or that there was not some inadvertence or perhaps some omission. Indeed we find language in his opinion in *Chappell v. Waterworth*, 155 U. S. 102, intimating that in ejectment against the keeper of a United States light-house, an averment in the declaration that such was the nature of defendant's holding, would give jurisdiction, though plaintiff asserted no claim under the United States Constitution or laws; for he says that the declaration is insufficient to show that the suit arose under the Constitution or laws, because "it does not show that *either* party claims any right under the Constitution or laws of the United States."

And while the whole court concurred in the decision of the first two cases in *Tennessee v. Union Bank*, that the complaint did not show jurisdiction, we submit that the Justices must be taken to have concurred and to have in fact concurred, on the authority of the cases cited and quoted, and on the grounds therein stated, and not to have concurred in a decision intended to overrule them. Only thus can the case be reconciled with those preceding and following it.

While Congress may not give the circuit courts jurisdiction beyond the constitutional grant, it may give them as much less as it sees fit. And if it intended to reduce the original jurisdiction of the circuit courts as it had confessedly existed under the

act of 1875 to the narrow limits against which we contend, it would not have reenacted the same grant of jurisdiction as in the act of 1875. Instead of "*all* civil suits, arising," etc., the act would have read, "all civil suits in which the plaintiff in his declaration or bill, asserts a right under the Constitution," etc., or words to that effect.

The following test of the ruling under discussion would seem to demonstrate its unsoundness.

It is conceded that wherever jurisdiction depends on the character of the suit, whoever invokes the jurisdiction must do so upon a record showing jurisdiction.

Under this rule, the plaintiff in an original suit must, when he invokes the jurisdiction, do so upon a declaration or bill (for at that time his pleading is the only record) showing that the suit arises under the Constitution or laws, etc.

Therefore, says the opinion he must assert in his pleading a right under the Constitution or a law.

But this last conclusion is sound only upon the assumption that the only suit arising under the Constitution or laws is a suit in which the plaintiff asserts a right under the Constitution or laws.

But the whole class of cases removed under the act of 1875, where the plaintiff claimed nothing under the Constitution or laws, and the federal question was raised by defendant, refute the assumption. These suits were within the jurisdiction of the circuit court, and were so because and only because arising under the Constitution or laws.

It may be suggested that a defendant, asserting in his answer a right under the Constitution or laws, and then removing the case, stands in the circuit court, in respect of jurisdiction, on the footing of a plaintiff, since it is he who brings the case to the court for its cognizance and invokes the jurisdiction; and therefore that this satisfies the requirements that *plaintiff* must assert a right under the Constitution, etc., and must do so in his bill or declaration.

The suggestion seems reasonable. But take this case, under the act of 1875:

Plaintiff sues in a state court on a promissory note. Defendant pleads a discharge in bankruptcy. Immediately after this answer the *plaintiff* removes the case.

Here the plaintiff asserts no right under the Constitution, etc., and the party invoking the jurisdiction of the circuit court (also the plaintiff) asserts no such right.

But the circuit court would certainly have had jurisdiction of such a suit as one arising, etc. This being so, it follows that the suits in which the plaintiff asserts a right under the Constitution or laws are not the only suits arising under the Constitution or laws of the United States,—which is what we have essayed to prove.

And as it is not true that every person—not true that a plaintiff in *all* cases—bringing a suit to the circuit court for its cognizance, must assert at that time on the record a right under the Constitution or laws, what ground is there for holding that the plaintiff in an original suit must do so in his bill or declaration?

THIRD.

The cause was properly removed because of the plaintiff's assertion of right and claim of relief under the Constitution and laws of the United States.

(1)

Besides the claims of the state under the full-faith-and-credit clause of Article IV of the Constitution, which has been orally argued by its counsel before the Court, and its claim under the swamp-land granting acts of Congress, which are a subject of argument in our brief already filed, (pages 32-35,) the State asserts a right as a property-owner and as engaged in interstate commerce to carry on that commerce free from obstruction by combinations in restraint of commerce or by monopolies of such commerce—substantially the same right as that asserted by the United States in the *Debs Case*, 158 U. S. 564, 583-4.

That a citizen's right to carry on interstate commerce is a constitutional right is declared by this Court in

Crutcher v. Kentucky, 141 U. S. 47, 57.

Reid v. Colorado, 187 U. S. 137.

And there can be no doubt that a State has the same right as a citizen.

The bill directly asserts this right and charges a violation of it by the acts of the combination alleged in the bill. It also charges that such acts are in vio-

lation of the Federal Anti-trust Act, which is specially directed against violation of such rights by combinations in restraint of commerce.

The bill plainly asserts a right under the Constitution as well as under the Anti-trust Act, and this gives jurisdiction. Whether the bill sufficiently alleges continuous or threatened injury to that right to make a case for the relief prayed or for any equitable relief is not a question of jurisdiction, but a question for the court to decide in the exercise of jurisdiction.

Swafford v. Templeton, 185 U. S. 487, 493-4.
Southern Pacific R. Co. v. California, 118 U. S. 112-113.
Hax v. Caspar, 31 Fed. 499, 501.
Lowry v. Chicago, B. & Q. R. Co., 46 Fed. 83, 85.

And while the mere assertion of a right which it is perfectly plain is not given, or which this court has definitely settled is not given by the Constitution or a law will not sustain the jurisdiction, yet if it is a fair question for argument whether the right asserted is given by the Constitution or a law, this is sufficient for jurisdiction, even though the Court, in the exercise of its jurisdiction to hear and determine the cause, should decide against the existence of the right. In this case the assertion of a right under the Constitution to carry on interstate commerce is certainly justified by the decisions of this court just cited, and is therefore sufficient as a foundation for jurisdiction.

This being so, then before the Anti-trust Act,

one asserting such a right could have sued in the circuit court at law or in equity, for damages already sustained from its violation or for an injunction to prevent future wrongs or a continuance of existing wrongs, and this whether the injury complained of was done or threatened by an individual or a combination of individuals.

(2)

This right of such a plaintiff to sue—the jurisdiction of the circuit court to entertain the suit—is not impaired or taken away by the Anti-trust Act. So far as the right asserted by plaintiff in this suit is concerned, the Anti-trust Act did not create it, although recognizing it in so far as it is a right to be protected against conspiracies and combinations. The act gives no new jurisdiction of subject-matter to the circuit courts so far as concerns individuals or suits by them to protect their property rights. It gives a probably new jurisdiction of suits by the United States not to enforce or protect property rights, but to prevent violations of the act as such, as crimes.

The right asserted being such that its assertion in the bill would have been sufficient for jurisdiction of an original suit to redress or prevent violations of it by an individual or a combination before the Anti-trust Act, the question is not has that act conferred jurisdiction of such suits, (that act is concerned only with combinations, etc., and the wrongs done by them, not with wrongs done by individuals,) but has it, while expressly declaring the right taken

away the already existing remedy in equity against combinations?

Hardly anything less than express words to that effect will, in such case, be construed to take away jurisdiction. The court does not lose its jurisdiction by implication. Whatever new jurisdiction or new remedies are given by the act must be taken as cumulative and not as exclusive or by way of substitution. And it is unreasonable to suppose that Congress meant to take away the existing remedy in equity against combinations, while leaving it against individuals.

Even if the right asserted by plaintiff were held to be created by and exist under the Anti-trust law alone, and even if that act created a new jurisdiction or gave new remedies for the right in favor of individuals, this would not preclude this suit in equity by plaintiff, though in that case the suit would be wholly under the act, while it now is under both the Constitution and the act to enforce a right created by the former and reaffirmed by the latter.

The rule that when a statute creates a right and also provides a remedy at law, the statutory remedy is exclusive, excludes only remedies at law and does not oust the court of its equitable jurisdiction. In such cases the court possesses the same jurisdiction to entertain suits in equity and to administer equitable relief as if the right thus created by statute had owed its existence to the common law, and on the same grounds.

This is so well settled that it will be enough to cite two instances.

At common law it was not an actionable wrong—and so not a legal wrong at all—for a tenant by demise or lease for life or for years to commit waste. In committing it he violated no legal rights of the owner (in the absence of provision against it in the lease).

The statute of Marlebridge, 52 Henry III, c. 24, (A. D. 1267) gave the owner a special action for his damages, against such tenant for waste committed by him, and the statute of Gloucester, 6 Edw. I, c. 5 (A. D. 1278) gave a recovery of the place wasted and treble damages—(just as the Anti-trust law gives treble damages).

Coke, 2d Inst., 144, 299.

Since the reign of Richard II, injunctions against such tenants to stay waste have been continually granted. There is no better recognized head of equity jurisdiction—in spite of the fact that a special remedy at law was given by the statute creating the right.

The English copyright act of 1842 (5 & 6 Vict., c. 45) gave to authors, etc., a copyright, (not known to the common law, *Donaldson v. Beckett*, 4 Burr. 2408; and see *Wheaton v. Peters*, 8 Pet. 591), and in section 17 prohibited the importation or sale of pirated copies, and provided for the seizure and forfeiture of such copies, and further that any person convicted of a violation of the prohibition should for each offence forfeit ten pounds and double the value of each copy; one-half the penalty to go to the owner of the copyright.

Here was a right created by statute and a specific remedy given by the same statute for its violation.

Plaintiff, owner of a copyright, sued for an injunction to restrain the sale of imported copies by defendant.

The cause was heard on bill and answer before one of the greatest of equity judges, Sir George Jessel, M. R.

In directing a decree for plaintiff he said on this point:

> "There was a point not insisted upon, but mentioned during the course of the argument. It was said that the 17th section of the Act created a new offence of importation and enacted a particular penalty, and it was argued that where a new offence and a penalty for it had been created by statute, a person proceeding under the statute was confined to the recovery of the penalty, and that nothing else could be asked for. That is true as a general rule of law, but there are two exceptions. The first of the exceptions is the ancillary remedy in equity by injunction to protect a right. That is a mode of preventing that being done which, if done, would be an offence. Wherever an act is illegal and is threatened the Court will interfere and prevent the act being done—and as regards the mode of granting an injunction, the Court will grant it either when the legal act is threatened but has not been actually done, or when it has been done and seemingly is intended to be repeated." *Cooper v. Whittingham*, 15 Ch. Div. 501, 506.

This decision was approved and followed so lately as the case of *Stevens v. Chown*, (1891) 1 Ch. 894, and, so far as we know, has never been questioned.

The circuit court in a case like this, upon acquiring jurisdiction of the cause by reason of the federal questions presented by the bill, (1) on the constitutionality of the state legislation, and (2) on the claim of rights under the Constitution and laws, has jurisdiction to decide, not only these federal questions, but every question, federal or non-federal, that may be presented by the bill or arise upon the other pleadings or the evidence. *Osborn v. Bank of United States, supra.*

And the court has jurisdiction to decide the cause on these non-federal grounds, without deciding or even considering the federal questions presented by the bill. And this is the proper course where the federal questions are constitutional questions. *Santa Clara Co. v. Southern Pacific R. R.*, 118 U. S. 394, 410-411, 416.

And its jurisdiction remains the same although the plaintiff should fail to establish by proofs the facts alleged as showing a right under the Constitution or laws or otherwise raising a federal question, for the jurisdiction is determined by the averments of the bill. *Southern Pacific R. Co. v. California*, 118 U. S. 109 112-3; *City Ry. Co. v. Citizens R. R. Co.*, 166 U. S. 537, 562.

And the fact that the federal questions may receive little or no attention in the argument in this Court, or even in the circuit court, does not affect the jurisdiction of either court. It may pass by the questions argued and decide the federal questions, just as, in *Santa Clara Co. v. Southern Pacific R.*

R., supra, this Court passed by the federal questions and decided the cause on non-federal grounds.

The validity of the removal should be affirmed.

JOHN G. JOHNSON,
GEO. B. YOUNG,
M. D. GROVER,
C. W. BUNN,
Counsel for Appellees.

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Supreme Court of the United States.

No. 433.—October Term, 1903.

State of Minnesota, Appellant, *vs.* Northern Securities Company, Great Northern Railway Company, Northern Pacific Railway Company, et al. } Appeal from the Circuit Court of the United States for the District of Minnesota.

[April 11th 1904.]

Mr. Justice Harlan delivered the opinion of the Court.

By a statute of Minnesota passed March 9th 1874, it was provided that no railroad corporation or the lessees, purchasers or managers thereof should consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control, any other railroad corporation owning or having under its control a parallel or competing line; nor should any officer of such corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line; and the question whether railroads were parallel or competing lines should, when demanded by the party complainant, be decided by a jury as in other civil issues. *Laws, Minn.* 1874, *p.* 154.

A subsequent statute, passed March 3d 1881, provided that any railroad corporation, either domestic or foreign, whether organized under a general law or by virtue of a special charter, might lease or purchase, or become owner of or control, or hold the stock of, any other railroad corporation, when the respective railroads could be lawfully connected and operated together "so as to constitute one continuous main line, with or without branches," § 1; and that any railroad corporation, whose lines of railroad, within or without the State, might be lawfully connected and operated together to constitute one continuous main line, so as to admit of the passage of trains over them without break or interruption, "could consolidate their stock and franchises so as to become one corporation." § 2. But by the same statute it was provided that no railroad corporation should consolidate with, lease or purchase, or in any way become owner of, or control any other railroad corporation, or any stock, franchises, rights of property thereof, which owned or controlled "a parallel or competing line." § 3. *Laws of Minn.* 1881, *p.* 109.

At a later date, 1899, the Legislature of Minnesota passed another statute relating principally to such restraints upon trade and commerce

as interfered with competition among those engaged therein. That statute contained these provisions: "§ 1. Any contract, agreement, arrangement or conspiracy, or any combination in the form of a trust, or otherwise, hereafter entered into which is in restraint of trade or commerce within this State, or in restraint of trade or commerce between any of the people of this State and any of the people of any other State or country, or which limits or tends to limit or control the supply of any article, commodity or utility, or the articles which enter into the manufacture of any article [of] utility, or which regulates, limits or controls or raises or tends to regulate, limit, control or raise the market price of any article, commodity or utility, or tends to limit or regulate the production of any such article, commodity or utility, or in any manner destroys, limits or interferes with open and free competition in either the production, purchase or sale of any commodity, article or utility, is hereby prohibited and declared to be unlawful. § 2. That when any corporation heretofore or hereafter created, organized or existing under the laws of this State, whether general or special, hereafter unites in any manner with any other corporation wheresoever created, or with any individual, whereby such corporation surrenders or transfers, by sale or otherwise, in whole or in part, its franchise, rights or privileges or the control or management of its business to any other corporation or individual, or whereby the business management or control of the business of such corporation is limited, changed or in any manner affected, and the purpose or effect of such union or combination is to limit, control or destroy competition in the manufacture or sale of any article or commodity, or is to limit or control the production of any article or commodity, or is to control or fix the price or market value of any article or commodity, or the price or market value of the material entering into the production of any article or commodity, or in case the purpose or effect of such union or combination is to control or monopolize in any manner the trade or commerce, or any part thereof, of this State or of the several States, such union, combination, agreement, arrangement or contract is hereby prohibited and declared to be unlawful. . . § 3. Any corporation heretofore or hereafter created, organized or existing under the laws of this State, which shall hereafter either directly or indirectly make any contract, agreement or arrangement, or enter into any combination, conspiracy or trust, as defined in section one of this act, shall, in addition to the penalty prescribed in section two of this act, forfeit its charter, rights and franchises, and it shall thereafter be unlawful for such corporation to engage in business, either as a corporation or as a part of any combination, trust or monopoly, except as to the final disposition of its property under the laws of this State. . . § 6. That for the purpose of carrying out the provisions of this act any citizen of this State may, and it is hereby declared to be the duty of the Attorney General to, institute,

in the name of the State, proceedings in any court of competent jurisdiction against any person, partnership, association or corporation who may be guilty of violating any of the provisions of section one of this act, for the purpose of imposing the penalties imposed by this act, or securing the enforcement of section three hereof." *Gen. Laws, Minn.* 1899, *c.* 357.

These statutes being in force the State of Minnesota instituted this suit in one of its own courts against the Northern Securities Company, a corporation of New Jersey; the Great Northern Railway Company, a corporation of Minnesota; the Northern Pacific Railway Company, a corporation of Wisconsin, which, having filed its articles of incorporation with the Secretary of State of Minnesota, became subject to the laws of that State relating to railroad corporations; and James J. Hill, as President of the Northern Securities Company, and individually.

What is the nature of the case as disclosed by the complaint filed in the State court?

The complaint alleged—

That the Great Northern Railway Company and the Northern Pacific Railway Company each owned or controlled and maintained a system of railways connecting the Great Lakes and the Pacific Ocean, their main roads constituting, substantially, parallel and competing lines;

That pursuant to an agreement between the defendant Hill and other stockholders of the Great Northern Railway Company (representing a controlling interest in the stock of that company) and J. Pierpont Morgan and other stockholders of the Northern Pacific Railway Company (representing a controlling interest in the stock of that company) the Northern Securities Company was incorporated solely as an instrumentality through which the stock, property and franchises of the Great Northern and Northern Pacific Railway Companies should be consolidated in effect, if not in form, and the management and control of their business affairs, respectively, including the fixing of rates and charges for the transportation of passengers and freight over any and all the lines of railway of each of those companies, as well within as without the State, be vested in and controlled by the Securities Company, and all competition in freight and passenger traffic betweeen the two systems of railway, within and without the State, to be suppressed and removed; that by means of such arrangement it was sought and intended to ignore, evade and violate the laws of the State prohibiting as well the consolidation of the stock, property or franchise of parallel or competing lines of railway therein, and the control or management thereof, as all combinations in restraint of trade or commerce within the State, and between the people of Minnesota and the people of other States and countries; and, that if the Securities Company was allowed to hold and control the stocks of the constituent railway companies and to carry out the purpose and object of its incorporators, as well as its own, "full

faith and credit will not be given to the public acts of this complainant and it will be deprived of a further right guaranteed to it by the Constitution of the United States;"

That the said scheme had been consummated, and said two railway systems were now under the absolute management and control of the Securities Company, and "by reason thereof all competition between said lines has been destroyed and a monopoly in railway traffic in Minnesota (as well as without said State) has been created, to the great and permanent and irreparable damage of the State of Minnesota, and to the people thereof, and in violation of the laws made by the authority of the United States in such case made and provided, viz: The act of Congress approved July 2d 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies;'" and

That the carrying out the above agreements and plan of consolidation and monopoly, and in every step taken to consummate it, the officers and directors of each of said railway companies were severally fully advised and consented thereto, and, unless restrained by this court, the Securities Company would continue to manage and control the business and affairs of Great Northern and Northern Pacific Railway Companies, and to suppress all competition between them for freight and passenger traffic, as well as to monopolize railway traffic in that State, to the irreparable damage of the State and the people thereof.

The substantial relief asked was a decree declaring, among other things, the alleged agreement and combination to be unlawful, and all acts done and to be done in pursuance thereof contrary to and in violation of the laws of Minnesota *and of the United States;* prohibiting the Securities Company, its agents and officers, from acquiring, receiving, holding, voting or in any manner acting as the owner of any of the shares of the capital stock of either the Northern Pacific or the Great Northern Railway Company, or from exercising any management, direction or control over the constituent companies; and enjoining those railway companies from recognizing or accepting the Northern Securities Company as the holder or owner of any shares of the capital stock of either of those companies, or from effecting any combination or agreement that would disturb their independent integrity, management and control, respectively, or that would directly or indirectly destroy free and unlimited competition between them by interchange of traffic, poolings of earnings, division of property or otherwise.

The Securities Company, appearing specially for that purpose, filed its petition for the removal of the case into the Circuit Court of the United States upon the ground that the suit was of a civil nature, in equity, involved, exclusive of costs, the sum of two thousand dollars, and was *one arising under the Constitution and laws of the United States.*

The State court approved the required statutory bond for removal, and made an order, reciting that the case was removed to the Federal court.

The Northern Securities Company, appearing specially for that purpose, gave notice of a motion to have the service of summons upon it vacated. Notice was also given of a like motion as to the service of summons upon defendant Hill in his capacity as President of that company. Subsequently, the company, and defendant Hill as its President, gave notice that the above notices were withdrawn, and they accordingly entered their appearance in the cause.

At a later date the defendants severally answered, and the State filed its replication to each answer. Proofs were taken, and the cause having been heard, the bill was dismissed upon the merits. 123 *Fed. Rep.* 692.

After the cause was argued here the parties were invited to submit briefs upon the question whether the Circuit Court of the United States could take cognizance of the case upon removal from the State court. From the briefs filed in response to that invitation it appeared that both sides deemed the case a removable one and insist that this court should consider the merits as disclosed by the pleadings and evidence. But consent of parties can never confer jurisdiction upon a Federal court. If the record does not affirmatively show jurisdiction in the Circuit Court, we must, upon our own motion, so declare, and make such order as will prevent that court from exercising an authority not conferred upon it by statute. *M. C. & L. M. Railway Co.*, 111 *U. S.* 379, 382; *Robertson* v. *Cease*, 97 *U. S.* 646; *King Bridge* v. *Otoe County*, 120 *U. S.* 225; *Parker* v. *Ormsby*, 141 *U. S.* 83; *Mattingly* v. *Northwestern Va. R. R.*, 158 *U. S.* 53, 57; *Great Southern Fire Proof Hotel Co.* v. *Jones*, 177 *U. S.* 449, 453; *Continental National Bank* v. *Burford*, 191 *U. S.* 120; *Defiance Water Co.* v. *Defiance*, 191 *U. S.* 184, 194.

We proceed, therefore, to inquire whether the Circuit Court could take cognizance of this case upon removal from the State court and make a final decree upon the merits.

Of course, the Circuit Court could not take cognizance of the case as one presenting a controversy between citizens of different States; for the State of Minnesota is not a citizen within the meaning of the Constitution or the acts of Congress. *Postal Tel. Cable Co.* v. *Alabama*, 155 *U. S.* 487.

But the first section of the Judiciary Act of 1887–8 (24 *Stat.* 552, c. 373; 25 *Id.* 433, c. 866) provides, among other things, that the Circuit Courts of the United States may take original cognizance of all suits of a civil nature at law or in equity, arising under the Constitution or laws of the United States, where the matter in dispute, exclusive of costs, exceeds in value the sum of two thousand dollars. And the second section provides for the removal from a State court of "any suit of a civil nature, at law or in equity, arising under the Constitution or laws of the United States . . of which

the Circuit Courts of the United States are given original jurisdiction by the preceding section."

In *Tennessee* v. *Union & Planters Bank*, 152 *U. S.* 454, 461, which involved the scope and meaning of the acts of 1887–8, in respect of cases arising under the Constitution or laws of the United States, this court, after referring to section one, said: "But the corresponding clause in section 2 allows removals from a State court to be made only by defendants, and of suits 'of which the Circuit Courts of the United States are given original jurisdiction by the preceding section,' thus limiting the jurisdiction of a Circuit Court of the United States *on removal* by the defendant under this section to such suits *as might have been brought* in that court *by the plaintiff under the first section.* 24 *Stat.* 553; 25 *Stat.* 434. The change is in accordance with the general policy of these acts, manifest upon their face, and often recognized by this court, to contract the jurisdiction of the Circuit Courts of the United States." *Mexican Nat. Railroad* v. *Davidson*, 157 *U. S.* 201, 208; *Metcalf* v. *Watertown*, 128 *U. S.* 486. And in *Chappell* v. *Waterworth*, 155 *U. S.* 102, 107, the court, referring to *Tennessee* v. *Union & Planters' Bank*, said that it was there adjudged, upon full consideration, that, under the act of 1887–8, "a case (not depending on the citizenship of the parties nor otherwise specially provided for) cannot be removed from a State court into the Circuit Court of the United States, *as one arising under the Constitution, laws and treaties of the United States*, unless that appears by the plaintiff's statement of his own claim; and that, if it does not so appear, the want cannot be supplied by any statement in the petition for removal, or, in the subsequent pleadings." To the same effect are *Postal Tel. Cable Co.* v. *Alabama*, 155 *U. S.* 487; *United States* v. *American Bell Tel. Co.*, 159 *U. S.* 548, 553; *Oregon Short Line* v. *Skottowe*, 162 *U. S.* 490, 494; *Texas & Pacific Railway Co.* v. *Cody*, 166 *U. S.* 606, 608; *Pratt* v. *Paris Gas Light & Coke Co.*, 168 *U. S.* 255, 258; *Walker* v. *Collins*, 167 *U. S.* 57, 59; *Arkansas* v. *Kansas & Texas Coal Co.*, 183 *U. S.* 185; *Western Union Tel. Co.* v. *Ann Arbor Railroad Co.*, 178 *U. S.* 230. These cases establish, beyond further question in this court, the rule that, under existing statutes regulating the jurisdiction of the courts of the United States, a case cannot be removed from a State court, as one arising under the Constitution or laws of the United States, unless the plaintiff's complaint, bill or declaration shows it to be a case of that character. "If it does not appear at the outset," this court has quite recently said, "that the suit is one of which the Circuit Court at the time its jurisdiction is invoked could properly take cognizance, the suit must be dismissed." *Third St. Suburban Ry.* v. *Lewis*, 173 *U. S.* 457, 460.

We must then inquire whether the complaint presents a case arising under the Constitution or laws of the United States, in respect of which the original jurisdiction of the Circuit Court could have been invoked by the State?

The real purpose of the suit was to annul the agreement and suppress the combination alleged to exist between the defendant corporations upon the ground that such agreement and combination were in violation, first, of the laws of Minnesota, and, second, *of the Anti-Trust act of Congress.* If relief had been asked upon the ground alone that what the defendant corporations had done and would, unless restrained, continue to do, was forbidden by the statutes of Minnesota, the Circuit Court of the United States could not have taken cognizance of the case; for confessedly such a controversy would not have been one between citizens of different States, nor could such a suit have been deemed one arising under the Constitution or laws of the United States.

The contention, however, is that a case arising under the laws of the United States was presented by the allegation in the complaint that the combination and consolidation between the Great Northern and Northern Pacific Railway Companies and their control of their affairs and operations by the Northern Securities Company, were also in violation of the Anti-Trust act of Congress of July 2d 1890. An allegation in a complaint filed in a Circuit Court of the United States may, indeed, in a sense, confer jurisdiction to determine whether the case is of the class of which the court may properly take cognizance for purposes of a final decree on the merits. *Newburyport Water Co.* v. *City of Newburyport*, and *Pacific Electric Ry. Co.* v. *City of Los Angeles, decided at present term.* But if, notwithstanding such an allegation, the court finds, at any time, that the case does not really and substantially involve a dispute or controversy within its jurisdiction then, by the express command of the act of 1875, its duty is to proceed no further. That is manifest from the fifth section of that act, which provides: "That if, in any suit commenced in a Circuit Court or removed from a State court to a Circuit Court of the United States, it shall appear to the satisfaction of said Circuit Court, at any time after such suit has been brought or *removed thereto*, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act, the said Circuit Court shall proceed no further therein, but shall dismiss the suit *or remand it to the court from which it was removed* as justice may require, and shall make such order as to costs as shall be just." 18 *Stat.* 470. That provision has not been superseded by any subsequent legislation.

Does the present suit really and substantially involve a dispute or controversy properly within the jurisdiction of the Circuit Court? That is to say, could the suit, as disclosed by the complaint, have been brought by the State originally in that court? If it could not, then, under the act of 1887–8 and the adjudged cases, it should not have been removed from the State court and should be remanded.

By the first section of the Anti-Trust act every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, is declared to be illegal. The second section condemns the monopolizing or attempting to monopolize, or combining or conspiring to monopolize, any part of such trade or commerce. By the third section, every contract, combination in the form of trust or otherwise, or conspiracy in restraint of commerce in any Territory of the United States or the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with any foreign States, or between the District of Columbia and any State or States or foreign nations, is declared to be illegal. A violation of the provisions of each section is made a misdemeanor, punishable by a fine not exceeding five thousand dollars or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. Of course, a criminal prosecution under the act must be in the name of the United States and in a court of the United States—the District Attorney who conducts the prosecution being subject to the direction of the Attorney General as to the manner in which his duties shall be discharged. *R. S.* 362.

The fourth, sixth, seventh and eighth sections of the act are as follows:

"§ 4. The several Circuit Courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several District Attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and, pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

"§ 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported from the United States contrary to law.

"§ 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any Circuit Court of the United States in the district in which the defendant resides or is

found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

"§ 8. That the word 'person,' or 'persons,' wherever used in this act, shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State or the laws of any foreign country." 26 *Stat.* 209.

It thus appears that the act specifies four modes in which effect may be given to its provisions. It is clear that the present suit does not belong to either of those classes. It is not a criminal proceeding, (§§ 1, 2, 3,) nor a suit in equity in the name of the United States to restrain violations of the Anti-Trust act, (§ 4,) nor a proceeding in the name of the United States for the forfeiture of property being in the course of transportation, (§ 6,) nor an action by any person or corporation for the recovery of threefold damages for injury done to business or property by some other person or corporation. (§§ 7, 8.)

But it is said that as the act of Congress was for the benefit of all the States and all the people, this case is to be deemed one arising under the laws of the United States, and, therefore, cognizable by the Circuit Court, because one of the objects of the State of Minnesota by its suit is to protect certain of its proprietary interests, which, it is alleged, would be injured by violations, on the part of the defendants, of the act of Congress. Let us see what, in that view, is the case as presented by the complaint.

The complaint alleged that the State is the owner of more than three million acres of land, of the value of more than fifteen millions of dollars, obtained, by donation, from the United States, and that "the value of said lands, and the salability thereof, depends, in very large measure, upon having free, uninterrupted and open competition in passenger and freight rates over the lines of railway owned and operated by said Great Northern and Northern Pacific Railway Companies."

The bill also alleges "that many of said lands are vacant and unsettled and located in regions not at present reached by railway lines, and depend for settlement upon the construction of lines in the future; that it has heretofore been the practice of said Great Northern and Northern Pacific Railway Companies, respectively, to extend spur lines into territory adjacent to each of said roads, as well as into new territory, for the purpose of developing such territory, as well as to obtain traffic therefrom; that such new lines have been built in the past very largely by reason of the rivalry heretofore existing between said companies for existing, as well as new, business; that under the consolidation and unity of control hereinafter set forth such rivalry will cease, and many of the lands now owned by the State of Minnesota will not be reached by railroads for years to come, if

at all, owing to such combination and consolidation removing all rivalry and competition between said companies; that the settlement and occupation of said lands will add very much to their value, and such occupation will depend entirely upon the accessibility of railway lines and transportation facilities for marketing the products raised thereon; that if said lands are sold and become occupied, they will add very largely to the taxable value of the property of the State, and that said lands cannot be so sold, or the income of the State increased thereby, without the construction of railroad lines to as adjacent to the same."

It was further alleged that the State is the owner of, and has maintained at large expense, a State university, hospitals for the insane, normal schools for teachers, a training school for boys and girls, schools for deaf, dumb, blind and feeble-minded persons, a State school for indigent and homeless children, and a State penitentiary; that a great portion of the supplies of every kind for such institutions must, of necessity, be shipped over the different lines of railway owned and operated by the Northern Pacific and Great Northern Railway Companies; that the amount of taxes which the State must collect, and the successful maintenance of its public institutions, as well as the performance of its governmental functions and affairs, depend largely upon the value of the real and personal property situated within the State and the general prosperity and business success of its citizens; and that such prosperity and business depend very largely upon maintaining in the State free, open and unrestricted competition between the railway lines of those two companies.

The injury on account of which the present suit was brought is at most only remote and indirect; such an injury as would come alike, although in different degrees, to every individual owner of property in a State by reason of the suppression, in violation of the act of Congress, of free competition between interstate carriers engaged in business in such State; not such a direct, actual injury as that provided for in the seventh section of the statute. If Minnesota may, by an original suit, in its name, invoke the jurisdiction of the Circuit Court, because alone of the alleged remote and indirect injury to its proprietary interests arising from the mere absence of free competition in trade and commerce as carried on by interstate carriers within its limits, then every State upon like grounds may maintain, in its name, in a Circuit Court of the United States, a suit against interstate carriers engaged in business within their respective limits. Further, under that view, every individual owner of property in a State may, upon like general grounds, by an original suit, irrespective of any direct or special injury to him, invoke the original jurisdiction of a Circuit Court of the United States, to restrain and prevent violations of the Anti-Trust act of Congress. We do not think that Congress contemplated any such methods for the enforcement of the Anti-Trust act. We cannot suppose it was intended that the enforcement of the act should depend in any degree upon

original suits in equity instituted by the States or by individuals to prevent violations of its provisions. On the contrary, taking all the sections of that act together, we think that its intention was to limit direct proceedings in equity to prevent and restrain such violations of the Anti-Trust act as cause injury to the general public, or to all alike, merely from the suppression of competition in trade and commerce among the several States and with foreign nations, to those instituted in the name of the United States, under the fourth section of the act, by District Attorneys of the United States, acting under the direction of the Attorney General; thus securing the enforcement of the act, so far as direct proceedings in equity are concerned, according to some uniform plan, operative throughout the entire country. Possibly the thought of Congress was that by such a limitation upon suits in equity of a general nature to restrain violations of the act, irrespective of any direct injury sustained by particular persons or corporations, interstate and international trade and commerce and those carrying on such trade and commerce, as well as the general business of the country, would not be needlessly disturbed by suits brought, on all sides and in every direction, to accomplish improper or speculative purposes. At any rate, the interpretation we have given of the act is a more reasonable one. It is a safe and conservative interpretation, in view as well of the broad and exclusive power of Congress over interstate and international commerce as of the fact that, so far as such commerce is concerned, Congress has prescribed a specific mode for preventing restraints upon it, namely, suits in equity under the direction of the Attorney General. Of the present suit the Attorney General has no control, and is without any responsibility for the manner in which it is conducted, although, in its essential features, it is just such a suit as would be brought by his direction when proceeding under the fourth section of the Anti-Trust act.

The State presents still another view of the question of jurisdiction. Its complaint alleges that if the Securities Company be allowed to hold and control the stocks of the Great Northern and Northern Pacific Railway Companies and to carry out the purpose and object of its incorporation, full faith and credit will not be given to the public acts of the State. This, it is contended, presents a case arising under Article IV of the Constitution, providing that "full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State." It is said by the State's counsel that the "gravamen of the charge in appellant's complaint is that the defendants created a corporate device in New Jersey and used it for the purpose and with the result that property rights in Minnesota were affected, in violation of its laws. Our contention is that Article IV must be so construed as to make the constitutional enactment of Minnesota effective throughout the United States, so far as they apply to

and affect property rights within the State. Otherwise the policy and laws of any State may be easily evaded." We do not think that the clause of the Constitution above quoted has any bearing whatever upon the question under consideration. It only prescribes a rule by which courts, Federal and State, are to be guided when a question arises in the progress of a pending suit as to the faith and credit to be given by the court to the public acts, records and judicial proceedings of a State other than that in which the court is sitting. Even if it be assumed that the word "acts" includes "statutes," the clause has nothing to do with the conduct of individuals or corporations; and to invoke the rule which it prescribes does not make a case arising under the Constitution or laws of the United States.

What was the duty of the Circuit Court when it ascertained that the suit was not one of which it could take cognizance? The answer is indicated by the clause of the Judiciary Act of March 3d 1875, to which we have adverted.

For the reasons stated, we are of opinion that the suit does not—to use the words of the act of 1875—really and substantially involve a dispute or controversy within the jurisdiction of the Circuit Court for the purposes of a final decree. *Western Union Tel. Co.* v. *Ann Arbor R. R. Co.*, 178 *U.S.* 239, 243. That being the case, the Circuit Court, following the mandate of the statute, should not have proceeded therein, but should have remanded the cause to the State court.

The decree of the Circuit Court is reversed and the case is sent back with directions that it be remanded to the State court.

True copy.

Test:

Clerk Supreme Court, U. S.